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2529
No. 11919

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner

vs.

O'KEEFE AND MERRITT MANUFACTURING
COMPANY, etc.,

Appellees.

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., and
PHILIP MURRAY, Individually and as
President of the United Steelworkers of
America, C.I.O.,

Intervenors.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 456

Upon Petition for Enforcement With Modifications of an
Order of the National Labor Relations Board.

FILED
SEP 1 - 1948

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BOARD'S EXHIBIT NO. 1-A

United States of America
Before The National Labor Relations Board
Twenty-First Region

Case No. 21-C-2689

Date Filed 2/6, 1946

In the matter of
O'KEEFE & MERRITT COMPANY, INC. and
PIONEER ELECTRIC CO.

and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, CIO.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that O'Keefe & Merritt Company, Inc. and Pioneer Electric Co. at 3700 East Olympic Boulevard, Los Angeles 23, California employing 450 workers in stove and other steel fabricating business has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (5) of said Act, in that the United Steelworkers of America, Stove Division, Local 1981, CIO was on the 28th day of November, 1945 determined by the NLRB and so certified by it as the exclusive collective bargaining representative for the production and maintenance employees of the above named companies; that notwithstanding this determination and certification by the NLRB, the companies by their agents, representatives and employees have

failed and refused and continue to fail and refuse to recognize the said union as the said bargaining representative and have failed and refused and continue to fail and refuse to bargain with said union on behalf of the production and maintenance employees of said named companies.

By the acts set forth in the paragraph above and by other acts and statements of the said named companies, by and through their agents, representatives and employees, said companies have interfered with and violated the rights guaranteed to their employees under Section 7 of the Act, in violation of Section 8 (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

UNITED STEELWORKERS
OF AMERICA, STOVE DI-
VISION, LOCAL 1981, CIO

By /s/ JOHN DESPOL,

International Representative.

Subscribed and sworn to before me this 6th day of February, 1946 at Los Angeles, California.

[Seal] /s/ KATHLEEN SIMS,

Notary Public in and for said County and State.

BOARD'S EXHIBIT NO. 1-B

United States Of America
Before The National Labor Relations Board
Twenty-First Region

Case No. 21-C-2689

In the matter of
O'KEEFE AND MERRITT COMPANY, INC.,
and L. G. MITCHELL, W. J. O'KEEFE,
MARION JENKS, LEWIS M. BOYLE,
ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT d/b/a
PIONEER ELECTRIC COMPANY,
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, CIO., and
STOVE MOUNTERS INTERNATIONAL
UNION OF AMERICA, affiliated with the
AMERICAN FEDERATION OF LABOR,
party to the contract; and LOS ANGELES
METAL TRADES COUNCIL, A. F. of L.,
party to the contract.

COMPLAINT

It having been charged in the above-entitled matter by United Steelworkers of America, Stove Division, Local 1981, C.I.O., hereinafter referred to as the "Union" that O'Keefe and Merritt Company, Inc., and L. G. Mitchell, whose Christian name is unknown; W. J. O'Keefe, whose Christian name is unknown; Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr. and William J. Du-

rant, partners doing business under the fictitious firm name and style of Pioneer Electric Company, hereinafter referred to as "Respondents," have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the "Act," the Regional Director for the Twenty-first Region of the National Labor Relations Board, hereinafter called the "Board," designated as agent of the Board by Article IV, Section 1, subsection (c), Article II, Section 5 of its Rules and Regulations—Series 3, as amended, hereby issues its complaint and alleges the following:

1. Respondents are engaged in the business of manufacturing stoves and related products, having a place of business in the City of Los Angeles, California.

2. Respondents, in the operation of their business, caused, and continuously have caused large quantities of the principal raw materials used by them in their aforesaid business to be transported into the State of California from other States of the United States.

3. Respondents, in the operation of their aforesaid business, caused, and continuously have caused, large quantities of their finished products to be sold, distributed, and transported out of the State of California to States of the United States other than the State of California.

4. United Steelworkers of America, Stove Division, Local 1981, C. I. O., Los Angeles Metal Trades

Council, A. F. of L., and Stove Mounters International Union of North America, A. F. of L., are labor organizations within the meaning of section 2, subsection (5) of the Act.

5. Since on or about October 1, 1945, and at all times thereafter up to and including the date of this complaint, Respondents, while engaged in the afore-said business, acting through their agents and servants, specifically, but without limitation, Cecil W. Collins, Fred Rotter, Joe Spallino, Daniel P. O'Keefe, and William J. Durant, have interfered with, restrained, and coerced, and are now interfering with, restraining, and coercing their employees in the exercise of their rights to engage in concerted activities for the purpose of collective bargaining with Respondents, and for other mutual aid or protection, by the following acts and conduct, pleading without limitation:

- a. Inducing, and attempting to induce, the employees to transfer their union affiliation from the Union to Stove Mounters International Union of America, affiliated with the American Federation of Labor.
- b. By the purported transfer of the operation of the business from Respondents, O'Keefe and Merritt Company, Inc., to Respondent, Pioneer Electric Company.
- c. Aiding and assisting the Stove Mounters International Union of North America and the Los Angeles Metal Trades Council, A. F. of L., by instigating and conducting solicitation for membership into the Stove Mounters Interna-

tional Union of North America, affiliated with the American Federation of Labor and the Los Angeles Metal Trades Council, A. F. of L.,

- d. By entering into a contract or agreement with the Stove Mounters International Union of North America, affiliated with the A. F. of L., at a time when the Stove Mounters International Union of North America, affiliated with the A. F. of L., was not the duly designated exclusive bargaining agent for the employees within the meaning of the National Labor Relations Act.
- e. By entering into a contract or agreement with the Los Angeles Metal Trades Council, A. F. of L., at a time when the Los Angeles Metal Trades Council, A. F. of L., was not the duly designated exclusive bargaining agent for the employees within the meaning of the National Labor Relations Act.
- f. By attempting by means of offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the United Steelworkers of America, Stove Division, Local 1981, C. I. O., to withdraw this organization from its exclusive bargaining position on behalf of the employees and to discontinue further activity on behalf of the United Steelworkers of America, Stove Division, Local 1981, C. I. O.
- g. By threatening employees with discharge or other disciplinary action if they joined or refused to withdraw membership or designation

from United Steelworkers of America, Stove Division, Local 1981, C. I. O.

h. By questioning employees concerning their membership or desires for membership or designation in United Steelworkers of America, Stove Division, Local 1981, C. I. O.

6. By the commission of the acts, and each of them, set forth in paragraph 5, Respondents have engaged in, and are engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. A unit composed of all production and maintenance employees of Respondents, excluding office clerical employees; guards, parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern makers helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, would insure to Respondents' employees full benefit of the right to self-organization and otherwise would effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

8. On or about November 20, 1945, and all times thereafter, a majority of employees in the unit set forth in paragraph 7, above, did designate the union as its representative for the purpose of bargaining collectively with Respondents and by virtue of said designation was, and has been, at all times since

November 20, 1945, and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

9. Respondents, during the course and conduct of their business, did on or about November 20, 1944, refused and failed, and at all times thereafter, refused and failed, and do now refuse and fail to bargain collectively in good faith with respect to rates of pay, wages, hours, and other conditions of employment with the union as exclusive representative of all employees in the aforesaid unit. Respondents have refused and failed, and continued in their refusal and failure to meet, bargain, and negotiate, in good faith with the union for purposes of collective bargaining. Respondents by their acts, and each of them, as set forth herein, did engage in and are now engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

10. Respondents by the commission of the acts set forth in paragraph 10 hereof did interfere with, restrain, and coerce their employees, and are interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to said employees by Section 7 of the Act, and did thereby engage in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

11. The said purported contract entered into by Respondents with the Stove Mounters International Union of North America, affiliated with the Ameri-

can Federation of Labor, at a time when Stove Mounters International Union of North America, affiliated with the American Federation of Labor, was not the duly designated exclusive bargaining agent of said employees, and at a time when the Stove Mounters International Union of North America had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal and void contract, or agreement, and should be declared illegal, invalid, and void.

12. The said purported contract entered into by Respondents with Los Angeles Metal Trades Council, A. F. of L., at a time when Los Angeles Metal Trades Council, A. F. of L., was not the duly designated exclusive bargaining agent of said employees, and at a time when the Los Angeles Metal Trades Council, A. F. of L., had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal and void contract, or agreement, and should be declared illegal, invalid, and void.

13. The aforesaid acts of Respondents, as set forth in paragraphs 5, 6, 9, 10, 11, and 12, hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5), and Section 2, subsections (6) and (7) of the Act.

14. The aforesaid acts of Respondents, as set forth in paragraphs 5, 6, 9, 10, 11, and 12, occurred in connection with the operation of Respondents' described in paragraphs 1, 2, and 3, hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and

tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore the National Labor Relations Board, on the 14th day of February, 1946, issues its Complaint against Respondents herein.

[Seal] /s/ STEWART MEACHAM,
Director Twenty-first Region, National Labor Re-
lations Board, 111 West Seventh Street, Los
Angeles 14, California.

[Endorsed]: Filed March 13, 1946. [9]

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 27th day of February, 1946, at 10:00 a.m. in Room 704, 111 West Seventh Street Building, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the Twenty-first Region, with offices at Room 704, 111 West Seventh Street Building, Los Angeles 14, California, acting in this matter as agent of the National

Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 14th day of February, 1946.

[Seal] /s/ STEWART MEACHAM,
Regional Director, National
Labor Relations Board.

[Affidavit of service by mail and return receipts
(Board's Exhibits 1-D and 1-E) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-F

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as co-partners, d/b/a PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, C. I. O., and STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, affiliated with the AMERICAN FEDERATION OF LABOR, party to the contract; and LOS ANGELES METAL TRADES COUNCIL, A. F. of L., party to the contract.

AMENDED COMPLAINT

It having been charged in the above-entitled matter by United Steelworkers of America, Stove Division, Local 1981, C. I. O., hereinafter referred to as the "Union," that O'Keefe and Merritt Manufacturing Company, and L. G. Mitchell, whose Christian name is unknown; W. J. O'Keefe, whose Christian name is unknown; Marion Jenks, Lewis

M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, partners doing business under the fictitious firm name and style of Pioneer Electric Company, hereinafter referred to as "Respondents," have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the "Act," the Regional Director for the Twenty-first Region of the National Labor Relations Board, hereinafter called the "Board," designated as agent of the Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 3, as amended, hereby issues its Amended Complaint and alleges the following:

1. Respondent, O'Keefe and Merritt Manufacturing Company, is a corporation organized under and existing by virtue of the laws of the State of California, having a principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, where at all times mentioned herein it was engaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

2. Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant are partners doing business under the fictitious firm name and style of Pioneer Electric Company, having their principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, and where at all times mentioned herein they were en-

gaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

3. Respondents, in the course and conduct of their businesses as set forth above, caused and have continuously caused large quantities of materials to be purchased, obtained, shipped and transported in interstate commerce from and through states of the United States other than the State of California to their plant in the State of California, and cause and have continuously caused large quantities of products manufactured at the plant to be sold and transported in interstate commerce to, into and through states of the United States other than the State of California.

4. United Steelworkers of America, Stove Division, Local 1981, C. I. O., Los Angeles Metal Trades Council, affiliated with American Federation of Labor, and Stove Mounters International Union of North America, affiliated with American Federation of Labor, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

5. Respondents, since on or about October 1, 1945, and at all times thereafter up to and including the date of this Amended Complaint, while engaged in the businesses set forth and described in paragraphs 1, 2, and 3, above, acting through their officers, agents, employees, and servants, specifically but without limitation, Cecil W. Collins, Fred Rotter, Joe Spallino, Daniel P. O'Keefe and William J. Durant, have interfered with, restrained and coerced, and are now interfering with, restraining and coercing their employees in the exercise of

the rights of said employees to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by the following acts and conduct, pleading without limitation:

- a. Inducing and attempting to induce said employees to transfer their union affiliation from the Union to Stove Mounters International Union of North America, affiliated with the American Federation of Labor.
- b. Transferring or pretending to transfer the operation of the business from Respondent O'Keefe and Merritt Manufacturing Company to Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually, and as co-partners doing business under the fictitious firm name and style of Pioneer Electric Company.
- c. Contributing to and encouraging membership in Stove Mounters International Union of North America, and in Los Angeles Metal Trades Council, affiliated with American Federation of Labor, by instigating and soliciting membership in Stove Mounters International Union of North America, affiliated with American Federation of Labor, and in Los Angeles Metal Trades Council, affiliated with the American Federation of Labor.

- d. Entering into a contract with Stove Mounters International Union of North America, affiliated with American Federation of Labor, at a time when Stove Mounters International Union of North America, affiliated with American Federation of Labor was not the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act.
- e. Entering into an exclusive collective bargaining contract dated February 2, 1946, with Los Angeles Metal Trades Council, affiliated with American Federation of Labor, at a time when Los Angeles Metal Trades Council, affiliated with American Federation of Labor, was not the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act.
- f. Attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the Union, to surrender the Union's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the Union.
- g. Threatening their employees with discharge or other disciplinary action if they joined the Union, refused to withdraw membership from the Union, assisted the Union, or designated the Union as their bargaining agent.
- h. Questioning employees concerning their mem-

bership or desires for membership in or designation of the Union.

6. Respondents, by the commission of the acts and each of them set forth in paragraph 5, did interfere with, restrain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. A unit composed of all production and maintenance employees of Respondent O'Keefe and Merritt Manufacturing Company, excluding office clerical employees; guards, parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern makers helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, would insure to Respondent O'Keefe and Merritt Manufacturing Company's employees full benefit of the right to self-organization and otherwise would effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

8. On or about November 20, 1945, and all times thereafter, a majority of Respondent O'Keefe and Merritt Manufacturing Company's employees in the

unit set forth in paragraph 7, above, did designate the Union as its representative for the purpose of bargaining collectively with Respondents and by virtue of said designation the Union was, and has been, at all times since November 20, 1945, and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

9. Respondents, during the course and conduct of their businesses, as set forth and described in paragraphs 1, 2, and 3, above, did on or about November 20, 1945, refuse and fail, and at all times thereafter, refused and failed, and do now refuse and fail to meet, negotiate and bargain collectively in good faith with respect to rates of pay, wages, hours, and other conditions of employment with the Union as exclusive representative of all employees in the unit set forth in paragraph 7, above. Respondents by their acts, and each of them, as set forth herein, did engage in and are now engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

10. Respondents, by the acts set forth in paragraph 9 hereof, did interfere with, restrain, and coerce their employees, and are interfering with, restraining, and coercing employees in the exercise of the rights guaranteed to said employees by Section 7 of the Act, and did thereby engage in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

11. The said exclusive collective bargaining con-

tract dated February 2, 1946, entered into by Respondents with Stove Mounters International Union of North America, affiliated with American Federation of Labor, at a time when Stove Mounters International Union of North America, affiliated with American Federation of Labor, was not the duly designated exclusive bargaining agent of their employees, and at a time when Stove Mounters International Union of North America, affiliated with American Federation of Labor, had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal, invalid and void contract, and should be so declared.

12. The said exclusive collective bargaining contract entered into by Respondents with Los Angeles Metal Trades Council, affiliated with American Federation of Labor, at a time when Los Angeles Metal Trades Council, affiliated with American Federation of Labor, was not the duly designated exclusive bargaining agent of said employees, and at a time when the Los Angeles Metal Trades Council, affiliated with American Federation of Labor, had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal, invalid and void contract, or agreement, and should be so declared.

13. The aforesaid acts of Respondents, set forth and described in paragraphs 5, 6, 9, 10, 11, and 12, hereof, occurring in connection with the operations of Respondents set forth and described in paragraphs 1, 2, and 3, hereof, have a close, intimate and substantial relation to commerce as defined in

Section 2 (6) of the Act, and have led and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce.

14. The aforesaid acts and conduct of Respondents, set forth and described in paragraphs 5, 6, 9, 10, 11, 12, and 13 hereof, occurring in connection with the operations of Respondents set forth and described in paragraphs 1, 2, and 3, hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Sections 2, 6, and 7 of the Act.

Wherefore the National Labor Relations Board, on the 18th day of February, 1946, issues its Amended Complaint against Respondents herein.

[Seal] /s/ STEWART MEACHAM,
Director, Twenty-first Region National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California.

[Affidavit of service by mail and return receipts (Board's Exhibits 1-G and 1-H) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-I

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2689

Date Filed 2/21/1946

In the Matter of

O'KEEFE, AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as co-partners, d/b/a PIONEER ELECTRIC COMPANY
and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, C. I. O., and STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, affiliated with the AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96,

for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER-HANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; AND REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

FIRST AMENDED CHARGE

Pursuit to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that O'Keefe and Merritt Manufacturing Company, et al, 3700 East Olympic Boulevard, Los Angeles 23, California, employing 450 workers in stove and other steel fabricating business, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsection (1) and (5) of said Act in that

The United Steelworkers of America, Stove Division, Local 1981, C. I. O., was on the 28th day of November, 1945, determined by the NLRB and so certified by it as the exclusive collective bargaining representative for the production and maintenance employees of the above named companies; that notwithstanding this determination and cer-

tification by the NLRB, the companies by their agents, representatives and employees have failed and refused and continue to fail and refuse to recognize the said union as the said bargaining representative and have failed and refused and continue to fail and refuse to bargain with said union on behalf of the production and maintenance employees of said named companies.

By the acts set forth in the paragraph above and by other acts and statements of the said named companies, by and through their agents, representatives and employees, said companies have interfered with and violated the rights guaranteed to their employees under Section 7 of the Act, in violation of Section 8 (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

UNITED STEELWORKS OF
AMERICA, STOVE DIVI-
SION, LOCAL 1981, C. I. O.

By /s/ MILTON S. TYRE,
Its Attorney.

Subscribed and sworn to before me this 21 day
of February, 1946, at Los Angeles, California.

/s/ EUGENE M. PURVER,
Atty. 21st. Reg. NLRB.

BOARD'S EXHIBIT NO 1-J

United States Of America
Before The National Labor Relations Board
Twenty-First Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTUR-
ING COMPANY and L. G. MITCHELL, W.
J. O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, individually and as co-partners, d/b/a
PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
and STOVE MOUNTERS INTERNA-
TIONAL UNION OF NORTH AMERICA,
LOCAL 125, affiliated with the AMERICAN
FEDERATION OF LABOR; INTERNA-
TIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,
LOCAL 389, affiliated with AMERICAN FED-
ERATION OF LABOR; INTERNATIONAL

MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96, for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; and REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

SECOND AMENDED COMPLAINT

It having been charged in the above-entitled matter by United Steelworkers of America, Stove Division, Local 1981, C. I. O., hereinafter referred to as the "Union," that O'Keefe and Merritt Manufacturing Company, and L. G. Mitchell, whose Christian name is unknown; W. J. O'Keefe, whose Christian name is unknown; Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, partners doing business under the fictitious firm name and style of Pioneer Electric Company, hereinafter referred to as "Respondents," have engaged in, and are engaging in, certain unfair labor practices affecting commerce

as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the "Act," the Regional Director for the Twenty-first Region of the National Labor Relations Board, hereinafter called the "Board," designated as agent of the Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations—Series 3, as amended, hereby issues its Amended Complaint and alleges the following:

1. Respondents, O'Keefe and Merritt Manufacturing Company, is a corporation organized under and existing by virtue of the laws of the State of California, having a principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, where at all times mentioned herein it was engaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

2. Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant are partners doing business under the fictitious firm name and style of Pioneer Electric Company, having their principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, and where at all times mentioned herein they were engaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

3. Respondents, in the course and conduct of their businesses as set forth above, caused and have continuously caused large quantities of materials to

be purchased, obtained, shipped and transported in interstate commerce from and through states of the United States other than the State of California to their plant in the State of California, and cause and have continuously caused large quantities of products manufactured at the plant to be sold and transported in interstate commerce to, into and through states of the United States other than the State of California.

4. United Steelworkers of America, Stove Division, Local 1981, C.I. O., and Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

5. Respondents, since on or about October 1, 1945, and at all times thereafter up to and includ-

ing the date of this Second Amended Complaint, while engaged in the businesses set forth and described in paragraphs 1, 2, and 3, above, acting through their officers, agents, employees, and servants, specifically but without limitation, Cecil W. Collins, Fred Rotter, Joe Spallino, Daniel P. O'Keefe and William J. Durant, have interfered with, restrained and coerced, and are now interfering with, restraining and coercing their employees in the exercise of the rights of said employees to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by the following acts and conduct, pleading without limitation:

- a. Inducing and attempting to induce said employees to transfer their union affiliation from the Union to Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America,

Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor.

- b. Transferring or pretending to transfer the operation of the business from Respondent O'Keefe and Merritt Manufacturing Company to Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durrant, individually, and as co-partners doing business under the fictitious firm name and style of Pioneer Electric Company.
- c. Contributing to and encouraging membership in Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federa-

tion of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, by instigating and soliciting membership in said labor organizations.

- d. Entering into a contract with Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, at a time when none of said labor organizations was the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act.
- e. Attempting by offers of payment of money and other inducements to influence and persuade

John A. Despol and G. J. Conway, representatives of the Union, to surrender the Union's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the Union.

- f. Threatening their employees with discharge or other disciplinary action if they joined the Union, refused to withdraw membership from the Union, assisted the Union, or designated the Union as their bargaining agent.
- g. Questioning employees concerning their membership or desires for membership in or designation of the Union.

6. Respondents, by the commission of the acts and each of them set forth in paragraph 5, above, did interfere with, restrain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. A Unit composed of all production and maintenance employees of Respondent O'Keefe and Merritt Manufacturing Company, excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern makers helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or

otherwise effect changes in the status of employees, or effectively to recommend such action, would insure to Respondent O'Keefe and Merritt Manufacturing Company's employees full benefit of the right self-organization and otherwise would effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

8. On or about November 20, 1945, and all times thereafter, a majority of Respondent O'Keefe and Merritt Manufacturing Company's employees in the unit set forth in paragraph 7, above, did designate the Union as its representative for the purpose of bargaining collectively with Respondents and by virtue of said designation the Union was, and has been at all times since November 20, 1945, and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

9. Respondents, during the course and conduct of their businesses, as set forth and described in paragraphs 1, 2, and 3, above, did on or about November 20, 1945, refuse and fail, and at all times thereafter, refused and failed, and do now refuse and fail to meet, negotiate and bargain collectively in good faith with respect to rates of pay, wages, hours, other conditions of employment with the Union as exclusive representative of all employees in the unit set forth in paragraph 7, above. Respondents by their acts, and each of them, as set forth herein, did engage in and are now engaging in

unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

10. Respondents, by the acts set forth in paragraph 9, above, did interfere with, restrain, and coerce their employees, and are interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to said employees by Section 7 of the Act, and did thereby engage in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

11. The said exclusive collective bargaining contract dated February 2, 1946, entered into by Respondents with Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, at a time when none of said unions was

the duly designated exclusive bargaining agent of their employees, and at a time when said labor organizations had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal, invalid and void contract, and should be so declared.

12. The aforesaid acts of Respondents, set forth and described in paragraphs 5, 6, 9, 10, and 11, above, occurring in connection with the operations of Respondents, set forth and described in paragraphs 1, 2, and 3, above, have a close, intimate and substantial relation to commerce as defined in Section 2 (6) of the Act, and have led and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce.

13. The aforesaid acts and conduct of Respondents, set forth and described in paragraphs 5, 6, 9, 10, 11, and 12, above, occurring in connection with the operations of Respondents, set forth and described in paragraphs 1, 2, and 3, above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Sections 2, 6, and 7 of the Act.

Wherefore the National Labor Relations Board, on the 20th day of February, 1946, issues its Second Amended Complaint against Respondents herein.

[Seal] /s/ STEWART MEACHAM,
Director, Twenty-first Region, National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California.

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-K

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 6th day of March, 1946, at 10:00 a.m. in Room 704, 111 West Seventh Street Building, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Second Amended Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Amended Charge upon which the Second Amended Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the Twenty-first Region, with offices at Room 704, 111 West Seventh Street Building, Los Angeles 14, California, acting in this matter as agent of the National Labor Relations Board, an answer to the said Second Amended Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Second Amended

Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 20th day of February, 1946.

[Seal] /s/ STEWART MEACHAM,
Regional Director, National
Labor Relations Board.

[Affidavit of service by mail and return receipts
(Board's Exhibits 1-L and 1-M) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-N

[Title of Board and Cause.]

ORDER POSTPONING HEARING

It Is Hereby Ordered that the hearing in the above-entitled matter be, and hereby is, postponed to March 6, 1946, at 10:00 a.m., at the same place as appears in the Notice of Hearing heretofore issued.

Dated at Los Angeles, California, this 20th day of February, 1946.

[Seal] /s/ STEWART MEACHAM,
Director, Twenty-first Region, National Labor Re-
lations Board, 111 West Seventh Street, Los
Angeles 14, California.

[Affidavit of service by mail and return receipts
(Board's Exhibits 1-O and 1-P) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-Q

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, CIO., and
STOVE MOUNTERS INTERNATIONAL
UNION OF NORTH AMERICA, LOCAL 125,
AFFILIATED WITH THE AMERICAN
FEDERATION OF LABOR; INTERNA-
TIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,
LOCAL 389, affiliated with AMERICAN FED-
ERATION OF LABOR; INTERNATIONAL
MOULDERS AND FOUNDRY WORKERS
UNION OF NORTH AMERICA, LOCAL 376,
Affiliated with AMERICAN FEDERATION
OF LABOR; DISTRICT LODGE 96, for and

on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; AND REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

ANSWER OF RESPONDENTS

Comes now the respondents in the above-entitled matter and, for answer to the complaint, first amended complaint and second amended complaint on file herein, admit, deny and allege as follows:

I.

Answering Paragraph 5 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein, except that respondents admit that the O'Keefe & Merritt Co. did lease a certain part of their manufacturing facilities to the Pioneer Electric Company and that, thereafter, the Pioneer Electric Company did sign a labor contract with certain A. F. of L. Locals, and, in this connection, allege that O'Keefe & Merritt Co. has, on prior occasions leased certain portions of its factory to

the Pioneer Electric Co., and that the Pioneer Electric Company, prior to signing a contract with the various A. F. of L. Locals, referred to in the complaint herein on file, did ascertain from said Locals that they did represent a majority of the employees employed by the Pioneer Electric Company.

II.

Answering Paragraph 6 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

III.

Answering Paragraph 7 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

IV.

Answering Paragraph 8 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein; and, in this connection, allege that, at the time referred to therein, respondent, O'Keefe & Merritt Co., was, and, at this time is, in the process of reconverting from wartime work to its peacetime manufacture of gas ranges and other gas appliances and that a mere skeleton crew of employees was employed, many of whom were construction laborers and other employees of a temporary nature who are not now employed by the company; that since that time approximately ninety former employees of this company who were ex-servicemen

have returned to work and who were not employed at that time.

V.

Answering Paragraph 9 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

VI.

Answering Paragraph 10 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

VII.

Answering Paragraph 11 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein; and, in this connection, allege that the respondent, Pioneer Electric Company, was given satisfactory proof by the various A. F. of L. Locals affected, that the A. F. of L. did represent a majority of its employees.

VIII.

Answering Paragraph 12 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

IX.

Answering Paragraph 13 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

As a Further Separate and Distinct Defense, Respondents Allege:

I.

That the O'Keefe & Merritt Co. has, over a period of years, leased a portion of its factory to the Pioneer Electric Co.; that the Pioneer Electric Co. was and is a separate legal entity, employing at one time as many as 180 employees; that new partners have been admitted to Pioneer Electric Co. and old ones dropped out from time to time; that the said Pioneer Electric Co., or any continuation thereof, has been continuously in business since November of 1942, maintaining separate records, separate payrolls, separate employee and employer contributions, separate income tax returns, separate Workmen's Compensation and, in all matters, was, and is, a separate legal entity entirely separate and apart from the O'Keefe & Merritt Co.

II.

That the complainant had made numerous false promises to the employees of respondent, O'Keefe & Merritt Co., which promises it was impossible to perform. That the said employees had opportunity to see what other workers, operating under complainant's contracts, were receiving in pay and working conditions and that, in this manner, became dissatisfied with complainant and selected the various A. F. of L. Locals to represent them. That upon the transfer of the manufacturing facilities of the O'Keefe & Merritt Co. to the Pioneer Electric Company, which transfer the complainant

stated was for the purpose of securing O.P.A. concessions and other tax reductions, and not for the purpose of evading any obligation of respondents to bargain with complainant,—that, thereafter, the respondent, Pioneer Electric Company, being under no legal obligation to bargain with anyone and, after having satisfactory proof presented to it, to wit: that A. F. of L.'s various Locals represented the vast majority of its employees and all other stove factories in California of any importance, did, in good faith, sign a contract with the said A. F. of L. Locals, which contract calls for the same rate of pay being paid by every other stove concern in California of any importance and is, in every particular, fair to its employees. That, as a result of said contract and other benefits given, its employees are receiving approximately 20% more than any of the employees of the said stove factories in this area.

Wherefore, respondents pray that complainants take nothing by their complaint on file herein and that said complaint be dismissed.

/s/ CECIL W. COLLINS,

Attorney for Respondents.

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-R

United States of America Before the National
Labor Relations Board, Twenty-first Region

Case No. 21-C-2689

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, Individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al.

ANSWER OF LOS ANGELES COUNTY DIS-
TRICT COUNCIL OF CARPENTERS,
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, AF-
FILIATED WITH AMERICAN FEDERA-
TION OF LABOR, NAMED IN THE SEC-
OND AMENDED COMPLAINT AS
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, Af-
filiated With AMERICAN FEDERATION
OF LABOR, TO SECOND AMENDED COM-
PLAINT

Comes now Los Angeles County District Council
of Carpenters, United Brotherhood of Carpenters
and Joiners of America, affiliated with American

Federation of Labor, hereinafter referred to as "District Council," and answer the Second Amended Complaint herein as follows:

I.

The District Council alleges that it has no knowledge as to the truth or falsity of the facts alleged in Paragraph 5 of said Second Amended Complaint, or in Subdivisions (a), (b), (e), (f), or (g) of said Paragraph 5, or in Paragraphs 6, 9, 10, 11, or 13, of said Second Amended Complaint, and basing its denial on that ground denies generally and specifically each and every allegation therein contained.

II.

Further answering Subdivision (c) of said Paragraph 5 of said Second Amended Complaint, the District Council denies that the Respondents, or either of them, acting through any of their officers, agents, employees, or servants, have interfered with, restrained, or coerced, or are now interfering with, restraining, or coercing, their employees in the exercise of the rights of said employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection by contributing to or encouraging membership in any of the labor organizations named in said Subdivision (c) of said Paragraph 5, by instigating or soliciting membership in said labor organizations, or otherwise.

III.

The District Council admits that it, and the other labor organizations mentioned in Subdivision (d) of said Paragraph 5 of said Second Amended Complaint, entered into a contract with Pioneer Electric Company on January 2, 1946, and denies that it or any of the other labor organizations mentioned in said Subdivision (d) of said Paragraph 5, entered into any contract with the Respondent, O'Keefe and Merritt Manufacturing Company, and further denies that it or any of the other labor organizations mentioned in said Subdivision (d) of said Paragraph 5 entered into a contract with either respondent at a time when none of said labor organizations was the duly designated exclusive bargaining agent for the employees of either of said Respondents within the meaning of the National Labor Relations Act.

IV.

Further answering Subdivision (e) of said Paragraph 5 of the Second Amended Complaint, the District Council denies that the Union was ever, or now is, the duly designated exclusive bargaining representative of the employees of Pioneer Electric Company, or any of them.

V.

The District Council denies that any unit of employees of Respondent, O'Keefe and Merritt Manufacturing Company, has any materiality on any of the issues of this case.

VI.

Answering Paragraph 8 of said Second Amended Complaint, the District Council denies that there is any materiality in the fact, if it be a fact, that a majority of Respondent, O'Keefe and Merritt Manufacturing Company's employees in any unit did designate the Union as its representative for the purpose of bargaining collectively with Respondent, O'Keefe and Merritt Manufacturing Company, and in this connection the District Council denies that a majority or any of the employees of Pioneer Electric Company did designate the Union as its representative for the purpose of bargaining collectively with Pioneer Electric Company, and further denies that the Union is now, or ever has been, the exclusive representative of all or any of the employees of Pioneer Electric Company, for the purpose of collective bargaining with Pioneer Electric Company with respect to rates of pay, wages, hours, or other conditions of employment, or otherwise.

VII.

Answering Paragraph 11 of said Second Amended Complaint, the District Council denies that it or any of the other labor organizations named in said Paragraph 11 executed a contract of any kind with either of the Respondents on February 2, 1946, and denies that any contract entered into by it and any of the said other labor organizations with the Respondents, or either of them, was entered into at a time when none of said Unions was the duly designated exclusive bargaining agent of the employees

of the Respondents, or either of them, or at a time when the said labor organizations had been improperly or illegally assisted, as alleged in said Second Amended Complaint, or otherwise, or that any contract entered into by any of the said labor organizations is an illegal, invalid or void contract, or should be so declared.

Wherefore, the District Council prays that the said Second Amended Complaint be dismissed.

ARTHUR GARRETT,

Attorney for Los Angeles County District Council
of Carpenters, United Brotherhood of Carpen-
ters and Joiners of America, Affiliated With
American Federation of Labor.

State of California,
County of Los Angeles—ss.

Nick Cordil, being by me first duly sworn, deposes and says: That he is the Business Representative of Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor, and as such is authorized to execute this verification on its behalf, on behalf of which this answer is filed, in the above-entitled action; that he has read the foregoing Answer of Los Angeles County District Council of Carpenters, etc., to Second Amended Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are

therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ NICK CORDIL.

Subscribed and sworn to before me this 11th day of March, A.D. 1946.

[Notarial Seal]

/s/ ARTHUR GARRETT,
Notary Public in and for the County of Los Angeles, State of California.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Mar. 12, 1946.

BOARD'S EXHIBIT No. 1-S

United States of America Before the National
Labor Relations Board, Twenty-first Region

No. 21-C-2689

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, Individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al.

ANSWER OF INTERNATIONAL MOLDERS
AND FOUNDRY WORKERS, LOCAL No.
374, AFFILIATED WITH THE AMERICAN
FEDERATION OF LABOR

Comes now International Molders and Foundry Workers of North America, Local No. 374, affiliated with the American Federation of Labor, erroneously named herein as Local No. 376, hereinafter referred to as Local No. 374, and answering the second amended complaint on file herein, admits, denies and alleges as follows:

I.

The said Local No. 374 alleges that it has no knowledge as to the truth or falsity of the facts alleged in Paragraph 5, or of subdivisions A, B, E. F. or G, of said Paragraph 5; in Paragraph 6; in Paragraph 9; in Paragraph 10; in Paragraph 12; or in Paragraph 13, and basing its denial on that ground denies generally and specifically each and every allegation therein contained.

II.

Further answering subdivision C, of Paragraph 5, the said Local No. 374 denies that the respondents acting through any of their officers, agents and employees or servants, have interfered with, restrained or coerced, or now are interfering with, restraining or coercing, their employees in the exercise of the rights of said employees to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activi-

ties for the purposes of collective bargaining, or other mutual aid or protection by the following acts or conduct, or of any acts or conduct, or at all: contributing to or encouraging membership in International Molders and Foundry Workers, Local No. 374, affiliated with the American Federation of Labor; Stove Mounters International Union of North America, Local No. 125, affiliated with the American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, or any of them, by instigating or soliciting membership in said Labor Organizations, or any of them.

III.

Further answering subdivision D of said Paragraph 5, the said Local No. 374 admits that on or about the 2nd day of January, 1946, Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and its affiliated Locals, and the other Labor Organizations mentioned in said subdivision D, entered into a contract with Pioneer Electric Company, but the said Local No. 374 denies that the said contract was entered into at a time when none of said Labor Organizations was the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act, and denies that the respondent O'Keefe and Merritt Manufacturing Company entered into any contract with any of said Labor Organizations.

IV.

Further answering subdivision E of said Paragraph 5, the said Local No. 374 denies that the Union, as described in said second amended complaint, is now, or ever was, the duly designated exclusive bargaining representative, or the representative at all, of the employees of Pioneer Electric Company, or of any of said employees.

V.

Answering Paragraph 7 of said second amended complaint, the said Local No. 374 denies that any bargaining unit of the employees of the respondent O'Keefe and Merritt Manufacturing Company has any materiality on any of the issues in this case.

VI.

Answering Paragraph 8 of said second amended complaint, the said Local No. 374 denies that the fact, if it be a fact, that a majority or any of the employees of the respondent O'Keefe and Merritt Manufacturing Company did designate the Union as its representative for the purpose of bargaining collectively with respondent O'Keefe and Merritt Manufacturing Company, or that the Union is, or ever was, such bargaining representative, is not material to any of the issues of this case.

VII.

Answering Paragraph 11, the said Local No. 374 denies that any exclusive collective bargaining contract was entered into by it, or any of the other Labor Organizations affiliated with the American

Federation of Labor named in said second amended complaint, on February 2, 1946, with the respondents, or either of them, or at any other time, or at all, at a time when none of said Unions was the duly designated exclusive bargaining agent of the employees of Pioneer Electric Company, or at a time when said Labor Organizations, or any of them, have been improperly or illegally assisted as alleged in said second amended complaint, or at all, and further denies that any contract entered into between the said Labor Organizations, and either of respondents, is an illegal, invalid or void contract, or should be so declared.

Wherefore, Local No. 374 prays that the said second amended complaint be dismissed.

/s/ ARTHUR GARRETT,

Attorney for International Molders and Foundry Workers, Local 374, Affiliated With the American Federation of Labor, Erroneously Named Herein as Local No. 376.

Power of Attorney

We, the undersigned officers of International Molders and Foundry Workers of North America, Local No. 374, hereby certify that William A. Lazerini is the International Vice President of the International Molders and Foundry Workers of North America, affiliated with the American Federation of Labor, and as such is duly authorized by the said Local No. 374 to sign and verify answers

and other pleadings on behalf of said Local Union No. 374, in the within entitled proceeding.

.....,
President.

/s/ G. A. DREGER,
Secretary.

State of California,
County of Los Angeles—ss.

William A. Lazzerini, being by me first duly sworn, deposes and says: That he is the International Vice President of International Molders and Foundry Workers of North America, affiliated with the American Federation of Labor, and as such is duly authorized to make this verification on behalf of Local No. 374 of said International, in the above-entitled action; that he has heard read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ WILLIAM A. LAZZERINI.

Subscribed and sworn to before me this 11th day of March, A.D. 1946.

[Seal] /s/ ARTHUR GARRETT,
Notary Public in and for the County of Los Angeles, State of California.

[Affidavit of service by mail attached.]

[Endorsed]: Received Mar. 12, 1946.

BOARD'S EXHIBIT No. 1-T

United States of America Before the National
Labor Relations Board, Twenty-first Region

No. 21-C-2689

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, Individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al.

ANSWER OF STOVE MOUNTERS INTERNA-
TIONAL UNION OF NORTH AMERICA,
LOCAL No. 125, AFFILIATED WITH THE
AMERICAN FEDERATION OF LABOR,
TO SECOND AMENDED COMPLAINT

Comes now Stove Mounters International Union
of North America, Local No. 125, affiliated with the
American Federation of Labor, and answering the
second amended complaint on file herein, admits,
denies and alleges as follows:

I.

The said Local No. 125 alleges that it has no
knowledge as to the truth or falsity of the facts
alleged in Paragraph 5, or of subdivisions a, b, e, f,

or g, of said Paragraph 5; in Paragraph 6; in Paragraphs 9; in Paragraph 10; in Paragraph 12; or in Paragraph 13, and basing its denial on that ground denies generally and specifically each and every allegation therein contained.

II.

Further answering subdivision c, of Paragraph 5, the said Local No. 125 denies that the respondents acting through any of their officers, agents and employees or servants, have interfered with, restrained or coerced, or now are interfering with, restraining or coercing their employees in the exercise of the rights of said employees to self-organization, to form, join or assist Labor Organizations to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by the following acts or conduct, or by any acts or conduct, or at all: contributing to or encouraging membership in Stove Mounters International Union of North America, Local No. 125, affiliated with the American Federation of Labor; International Molders and Foundry Workers Union of North America, Local No. 374, affiliated with the American Federation of Labor, erroneously designated in the second amended complaint as Local No. 376; United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, or any of them, by instigating or soliciting membership in said Labor Organizations, or any of them.

III.

Further answering subdivision d, of said Paragraph 5, the said Local No. 125 admits that on or about the 2nd day of January, 1946, Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and its affiliated Locals, and the other Labor Organizations mentioned in said subdivision d, entered into a contract with Pioneer Electric Company, but the said Local No. 125 denies that the said contract was entered into at a time when none of said Labor Organizations was the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act, and denies that the respondent O'Keefe and Merritt Manufacturing Company entered into any contract with any of said Labor Organizations.

IV.

Further answering subdivision e, of said Paragraph 5, the said Local No. 125 denies that the Union, as described in said second amended complaint, is now, or ever was, the duly designated exclusive bargaining representative, or the representative at all, of the employees of Pioneer Electric Company, or of any of said employees.

V.

Answering Paragraph 7 of said second amended complaint, the said Local No. 125 denies that any bargaining unit of the employees of the respondent

O'Keefe and Merritt Manufacturing Company has any materiality on any of the issues in this case.

VI.

Answering Paragraph 8 of said second amended complaint, the said Local No. 125 denies that the fact, if it be a fact, that a majority or any of the employees of the respondent O'Keefe and Merritt Manufacturing Company did designate the Union as its representative for the purpose of bargaining collectively with respondent O'Keefe and Merritt Manufacturing Company, or that the Union is or ever was such bargaining representative, is material to any of the issues of this case.

VII.

Answering Paragraph 11, the said Local No. 125 denies that any exclusive collective bargaining contract was entered into by it, or any of the other Labor Organizations affiliated with the American Federation of Labor named in said second amended complaint, on February 2, 1946, with the respondents, or either of them, or at any other time, or at all, at a time when none of said Unions was the duly designated exclusive bargaining agent of the employees of Pioneer Electric Company, or at a time when said Labor Organizations, or any of them, have been improperly or illegally assisted as alleged in said second amended complaint, or at all, and further denies that any contract entered into between the said Labor Organizations and either of respondents, is an illegal, invalid or void contract, or should be so declared.

Wherefore, Local No. 125 prays that the said second amended complaint be dismissed.

/s/ ARTHUR GARRETT,
Attorney for Stove Mounters International Union
of North America, Local No. 125

Power of Attorney

We, the undersigned Officers of Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, hereby certify that John D. Roberts is the Special Representative of Stove Mounters International Union of North America, affiliated with the American Federation of Labor, and as such is duly authorized by the said Local Union 125 to sign and verify answers and other pleadings on behalf of said Local Union 125 in the within entitled proceeding.

Dated: March 11, 1946.

[Seal] /s/ HUBERT CUNNINGHAM,
President.

/s/ VESTER GRAHAM,
Secretary.

State of California,
County of Los Angeles—ss.

John D. Roberts, being by me first duly sworn, deposes and says: That he is the Special Representative of Stove Mounters International Union of North America, affiliated with the American Fed-

eration of Labor, and as such is duly authorized to make this verification on behalf of Local No. 125 of said International Union, in the above-entitled action; that he has heard read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ JOHN D. ROBERTS.

Subscribed and sworn to before me this 11th day of March, A.D. 1946.

[Seal] /s/ ARTHUR GARRETT,
Notary Public in and for the County of Los Angeles, State of California.

[Affidavit of service by mail attached.]

[Endorsed]: Received Mar. 12, 1946.

United States of America Before the National
Labor Relations Board

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT, INC., and L. G.
MITCHELL, W. J. O'KEEFE, MARION
JENKS, LEWIS M. BOYLE, ROBERT J.
MERRITT, ROBERT J. MERRITT, JR., and
WILLIAM J. DURANT, d/b/a PIONEER
ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
and STOVE MOUNTERS INTERNA-
TIONAL UNION OF AMERICA, Affiliated
With the AMERICAN FEDERATION OF
LABOR, Party to the Contract; and LOS AN-
GELES METAL TRADES COUNCIL,
A. F. L., Party to the Contract.

ORDER DESIGNATING TRIAL EXAMINER

It Is Hereby Ordered that Henry J. Kent act as
Trial Examiner in the above case and perform all
the duties and Exercise all the powers granted to
trial examiners under the Rules and Regulations—
Series 3, as amended, of the National Labor Rela-
tions Board.

Dated, Washington, D. C., March 6, 1946.

[Seal] /s/ FRANK BLOOM,
Chief Trial Examiner.

United States of America Before the National Labor Relations Board, Trial Examining Division, Washington, D. C.

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILBUR G. DURANT,¹ Individually and as Co-partners, Doing Business as PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, C. I. O.,

and

STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, Affiliated With the AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 389, Affiliated With AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF

¹Incorrectly named in the complaint as William J. Durant.

NORTH AMERICA, LOCAL No. 374,² Affiliated With AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 94,³ for and on Behalf of Its Affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL 792, Affiliated With AMERICAN FEDERATION OF LABOR; LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, Affiliated with AMERICAN FEDERATION OF LABOR;⁴ and REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, Affiliated With AMERICAN FEDERATION OF LABOR, Parties to the Contract.

Mr. Maurice J. Nicoson and Mr. Eugene M. Purver, for the Board.

Mr. Cecil W. Collins of Los Angeles, Calif., for the respondents.

²Erroneously named in the complaint as Local No. 376.

³Erroneously named in the complaint as District Lodge 96.

⁴Amended on motion to add Los Angeles County District Council of Carpenters to name as previously stated in the complaint.

Katz, Gallagher & Margolis, by Mr. Milton S. Tyre, of Los Angeles, Calif., for the CIO.

Mr. Arthur Garrett and Mr. John Leo Harris, both of Los Angeles, Calif., for the Stove Mounters, the Moulders and the Carpenters.

Mr. Dale O. Reed, of Los Angeles, Calif., for the IAM.

Mr. John Stevenson of Los Angeles, Calif., for the Teamsters.

Mr. Alexander H. Schullman and Mr. David S. Smith, both of Los Angeles, Calif., for the Painters.

INTERMEDIATE REPORT

[As Corrected by Erratum of Trial Examiner of
June 4, 1946.]

Statement of the Case

Upon charges and amended charges duly filed by the United Steelworkers of America, Stove Division, Local 1981, C.I.O., herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its second amended complaint dated February 21, 1946, against O'Keefe and Merritt Manufacturing Company, herein called the corporation respondent and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, herein called the partnership respondent, while both companies herein are jointly called the

respondents, alleging that the above-named respondents had engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, amendments to the complaint and notices of hearing were duly served upon the respondents, the CIO, Stove Mounters International Union of North America, Local 125, AFL, herein called the Stove Mounters; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, AFL, herein called the Teamsters; International Moulders and Foundry Workers Union of North America, Local 374, AFL, herein called the Moulders; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists, herein called the IAM; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL, herein called the Painters; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL, herein called the Carpenters and Refrigerator Fitters United Association, Local 508, AFL, herein called the Refrigerators.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act by the following acts and conduct; (a) inducing and attempting to in-

duce said employees to transfer their union affiliation from the CIO to one of the several American Federation of Labor unions above mentioned, or the IAM; (b) transferring or pretending to transfer the operation of the business from the corporation respondent to the partnership respondent; (c) contributing to and encouraging membership in one of the several American Federation of Labor unions above mentioned, or the IAM, by instigating and soliciting membership in said labor organizations; (d) entering into a contract with the several American Federation of Labor unions above mentioned, and the IAM, at a time when none of said labor organizations was the duly designated exclusive bargaining agent for the said employees within the meaning of the Act; (e) attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the CIO, to surrender the CIO's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO; (f) threatening their employees with discharge or other disciplinary action if they joined the CIO, refused to withdraw from membership in the CIO, assisted the CIO, or designated the CIO as their bargaining agent; (g) questioning employees concerning their membership in or desires for membership in or designation of the CIO; (2) that on or about November 20, 1945, and at all times thereafter, the respondents failed and refused to bargain with the CIO as the representative of their employees in a

duly certified appropriate bargaining unit; and (3) that by the said acts the respondents engaged in and are now engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act.

Thereafter, the respondents filed a joint answer admitting, in effect, some of the allegations in the complaint, but denying engaging in the unfair labor practices alleged. The said answer also affirmatively averred that the employees of the corporation respondent had become dissatisfied with the CIO and for that reason voluntarily shifted their allegiance to the various American Federation of Labor unions named above, or to the IAM; that the partnership respondent was an independent legal entity engaged in its own business prior to the transfer of certain manufacturing facilities by the corporation respondent to the partnership respondent; that the said transfer of business operations was consummated for proper business reasons and not for the purpose of evading any obligation of the respondents to bargain with the CIO; and that the partnership respondent being under no legal obligation to bargain with any labor organization entered into collective bargaining agreements with the above named American Federation of Labor unions, and the IAM, after receiving proper proof that the said organizations represented a majority of its employees in an appropriate unit. The Stove Mounters, the Carpenters, and the Moulders filed separate answers putting in issue the material alle-

gations of the complaint insofar as they pertained to these said organizations.

Pursuant to notice, a hearing was held at Los Angeles, California, on March 6, 1946, and from March 13 to March 28, inclusive, 1946, before the undersigned, Henry J. Kent, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, the CIO, the Stove Mounters, the Carpenters, the Moulders, the IAM, the Painters and the Teamsters were all represented by counsel and participated in the hearing.⁵ Full op-

⁵Although counsel for the respondents entered a general appearance and filed a joint and general answer on behalf of all of the respondents with the Board's attorney prior to the opening of the hearing on March 6, 1946, on March 13, 1946, the second day of the hearing, he stated on the record that he was only appearing for those respondents duly served with service of process, and in his brief contends, in effect, that some of the copartners were not legally served with process. The record shows that due service of process by registered mail was made upon all the respondents as provided by Section 11 (4) of the Act. Furthermore, assuming there had been defective service on any respondent, objections to such service was waived by the entry of a general appearance and the filing of general answer, on behalf of all respondents. The record shows that Refrigerator Fitters United Association, Local 508, A. F. of L., named in the complaint as a party to the contract, did not, in fact, sign the contract. Although duly served with process, it failed to enter an appearance or otherwise participate in the hearing. Counsel for International Brotherhood of Electrical Workers, Local Union B-11, A. F. of L., moved orally for leave to intervene at the opening of the hearing. The under-

portunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all parties. At the opening of the hearing, counsel for the respondents and the several American Federation of Labor unions moved orally for a continuance for further time to file answers to prepare for hearing. Counsel for the Board conceded that by reason of delays in mail deliveries, some of the parties served were entitled to a continuance of 1 or 2 days. The undersigned, over the objection by counsel for the CIO, granted an extension of time of 5 days to file answers and adjourned the hearing 1 week. At the close of the presentation of evidence by the Board on Friday, March 22, 1946, counsel for the several American Federation of Labor unions moved orally for a continuance for further time for preparation. The undersigned granted an adjournment to March 26 over objections from counsel for the CIO. Prior to presenting evidence on behalf of the respondents, their counsel, by written motions moved that the allegations of the complaint be dismissed. Both motions were denied without prejudice to later renewal. At the conclusion of the hearing, these motions were renewed by counsel for the respondents and the undersigned ruled that the said motions would be further considered and disposed of in his Interme-

signed granted counsel further time to present a written motion respecting intervention. Thereafter, by letter in evidence, its counsel withdrew the request for leave to intervene.

diate Report. At the conclusion of the hearing, counsel for the Board moved to conform the complaint to the proof with respect to formal matters, and the motion was granted without objection. Counsel for the Painters also at this time moved to dismiss the allegations of the complaint insofar as they concerned the Painters. Ruling was reserved and is disposed of below in this report. Counsel for the Stove Mounters, the Moulders, and the Carpenters presented oral argument before the undersigned but argument was waived by all other parties. All counsel were granted 20 days to file briefs with the undersigned and briefs have been received respectively from counsel for the respondents, the Board, the Stove Mounters, the Moulders, the Carpenters and the Painters.

Upon the basis of the foregoing and on the entire record, after having heard and observed the witnesses and considered all of the evidence, the undersigned makes the following:

Findings of Fact

I. The Business of the Respondents

The situs of the alleged unfair labor practices is a certain manufacturing plant in the City of Los Angeles, California. The plant was owned and operated by the corporation respondent, for many years, in connection with its business operations until shortly after the beginning of the last World War, when certain changes in plant operations were effected as set forth below.

a. The Business of the Corporation Respondent

O'Keefe and Merritt Manufacturing Company is a California corporation originally chartered in 1920 with its principal office and plant at Los Angeles, California. Prior to about February 4, 1946,⁶ it was engaged in the business of manufacturing and selling gas appliances and electric refrigerators, except for a period during the last World War beginning early in 1942 until shortly after V-J Day (to wit, August 14, 1945) when it was solely engaged as a prime contractor in the manufacture of electrical generator sets and various types of ammunition for the United States Government. During 1945, the corporation respondent sold products of an approximate value of \$2,000,000, of which about 10 per cent in value was sold in and shipped to states of the United States other than the State of California. It admits that it is engaged in commerce within the meaning of the Act.

During all the times material herein, and at the time of the hearing, the officers of the corporation respondent consisted of Daniel P. O'Keefe, president; W. J. Boyle, vice-president, and Robert J. Merritt, secretary-treasurer. The directors are Daniel P. O'Keefe, Robert J. Merritt, W. J. Boyle, Lu-

⁶As further appears below, corporation respondent on this date transferred substantially all of its manufacturing facilities and production employees to Pioneer, the partnership respondent, retaining only its technical designing staff, its sales and service organization and some of its maintenance employees.

cille Merritt, and William J. O'Keefe, the latter also serving in the capacity of general manager for O'Keefe and Merritt, when it was operating its own production facilities. The stock in the corporation is owned approximately as follows: Daniel P. O'Keefe 23.7 per cent; William J. O'Keefe, 4.8 per cent; Robert J. Merritt, 12.5 per cent; Lucille A. Merritt, 16.8 per cent; Robert J. Merritt, Jr., 4 per cent; W. J. Boyle, 8.7 per cent; Louis Boyle, 8.3 per cent; Evelyn Boyle, 8.3 per cent; Blanche Boyle, 8.3 per cent; Phyllis J. Mitchell, 4.8 per cent; W. J. and L. W. Boyle, trustees, .1 per cent; Marion E. Jenks, .1 per cent; John E. Boyle, .1 per cent; and Arline B. Oliphant, .1 per cent.

b. The Business of the Partnership Respondent

Pioneer Electric Company, the partnership respondent, was formed in 1942 by Robert J. Merritt, Louis Boyle and Willis Boyle for the purpose of engaging as a sub-contractor in the manufacture of war materials on a contract entered into by the corporation respondent with the United States Government as the prime contractor. On or about January 1, 1944, Robert J. Merritt, Jr., became a member of the partnership. All manufacturing operations of the partnership were carried on in a part of the O'Keefe and Merritt plant under lease to the partnership at a monthly rental of \$500. By September 17, 1945, all of the government contracts had been cancelled and over 80 per cent of its employees had been terminated.

On or about November 15, 1945, the partnership firm was again enlarged by taking in W. J. O'Keefe, Marion Jenks, W. G. Durant and L. J. Mitchell,⁷ at which time Willis J. Boyle withdrew from the partnership firm. Durant, the managing partner, owns a one-fourth interest and the other six partners each own a one-eighth interest in the partnership firm. New articles of partnership were entered into which indicate that the partnership intended to engage in the manufacture and sale of electrical equipment. From November 20, 1945, to January 31, 1946, it employed about 15 production employees.

On or about January 31, 1946, the corporation respondent transferred to the partnership respondent all of its manufacturing facilities and, on or about the same day, transferred approximately 300 of its production employees to the payroll of the partnership respondent. The partnership respondent has since that time continued to operate all of the manufacturing facilities at the Los Angeles plant. Pioneer admits that it is engaged in commerce within the meaning of the Act.

⁷It will be noted that all members of the partnership firm are either officers, directors, or stockholders of the O'Keefe and Merritt corporation, except Durant and Mitchell. Durant, since 1942, was chief engineer, and Mitchell, for a longer period of years, had been serving as auditor for the corporation respondent. Mitchell is also the husband of Phyllis J. Mitchell, a stockholder of the corporation respondent and a daughter of Daniel O'Keefe, its president.

II. The Organizations Involved

United Steelworkers of America, Stove Division, Local 1981, affiliated with the Congress of Industrial Organizations; Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with the American Federation of Labor; District Lodge 94 for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with the American Federation of Labor; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, are all labor organizations admitting to membership employees of the above-named respondents at their Los Angeles, California, plant.

III. The unfair labor practices

A. Background of labor relations and chronology of events

As noted above, the corporation respondent was engaged in the manufacture and sales of gas stoves, other gas appliances and electric refrigerators for many years prior to the last World War. In 1936 or 1937 the American Federation of Labor attempted to organize its employees and at the time issued a charter to a local union comprised of em-

ployees at the plant. This union, however, was never accorded recognition as a bargaining representative of the employees. The plant was struck by the A. F. of L. in 1936 or 1937, picketed until the United States entered the last World War and the company has thereafter continued to be posted on the American Federation of Labor's Unfair List. During the winter of 1943 and 1944 a CIO organization, other than the charging union herein, attempted to organize the plant and at the time filed a petition for Investigation and Certification of Representatives. The Board, on April 29, 1944, dismissed the petition because of failure of the petitioning union to make a substantial showing of representation.⁸

In September, 1945, the CIO, as herein named, started an organizational campaign among the corporation respondent's employees and some of the A. F. of L. unions herein named engaged in a competing campaign at or about the same time. On October 23, 1945, the CIO filed a petition for Investigation and Certification of Representatives.⁹ Subsequently, on November 14, 1945, the corporation respondent, the CIO and the Los Angeles Metal Trades Council, A. F. of L., entered into a consent

⁸Matter of O'Keefe & Merritt Manufacturing Company and O'Keefe & Merritt Division, Local 2018, affiliated with the United Steelworkers of America, CIO, 56 N.L.R.B. 102.

⁹Case No. 21-R-3110.

election agreement¹⁰ and an election was held under the auspices of the Board on November 20, 1945, which was won by the CIO. A Tally of Ballots was duly served on all parties which shows: that there were 341 eligible voters in the unit; that 296 ballots were voted; and that the CIO received 177 votes, Los Angeles Metal Trades Council, A. F. of L. 114, and that 5 votes were cast for neither. The Regional Director thereafter duly served upon the parties his Consent Determination of Representatives dated November 28, 1945, finding that the CIO was the majority representative for the employees of the corporation respondent in the unit set forth in the consent election agreement. No objections to the conduct of the ballot, nor to the Regional Director's determination of representation based on the results of the election were filed by any of the parties participating in the election, but counsel for the respondents herein, now asserts that the election was invalid for reasons further discussed

¹⁰The record fails to show to what extent, if any, employees had designated any of the craft unions to serve as their representative. According to the evidence, the Stove Mounters, Carpenters, Moulders and Teamsters of the A. F. of L. and the I.A.M. were the only craft organizations apparently claiming to represent any of the employees at the time the election was held. It is noted that H. B. McMurry, a representative of I.A.M., signed the consent election agreement on behalf of the Los Angeles Metal Trades Council, A. F. of L. This fact would lead the employer to regard the I.A.M. as an affiliate of the A. F. of L. regardless of the actual status of I.A.M., and the organization would benefit by any pro-A. F. of L. activities by the employer.

below in the report and which is found to be lacking in merit.

Following the said certification, the CIO requested the corporation respondent to bargain with it as the majority representative of its production and maintenance employees. Several bargaining conferences were held during December 1945 and January 1946, but no collective bargaining agreement was ever consummated. During January 1946, when the CIO was aggressively attempting to negotiate an agreement, the corporation was concurrently negotiating with the partnership respondent concerning the transfer of all of its manufacturing facilities to the partnership. On January 31, 1946, the corporation respondent transferred, by lease, all of its manufacturing facilities, together with the employees engaged on such operations at the Los Angeles plant, to the partnership. On or about the same day, the partnership entered into a union shop agreement with the I.A.M. and various American Federation of Labor unions who participated as parties in this proceeding covering all of the employees presently on the partnership company's payroll.¹¹

¹¹The record shows that on November 20, 1945, the date of the election, the partnership had approximately 15 production and maintenance employees on its pay roll and that the number of such employees did not materially increase until January 31, when it took over the 300 former employees from the corporation. The record fails to show that there has been any substantial change in the number of employees on either the corporation or partnership pay rolls since that time.

Following the transfer of operations and of the employees to the partnership, the CIO again requested the corporation to bargain for all of the employees in the previously certified unit. The corporation agreed to resume bargaining negotiations respecting the approximately 40 production and maintenance employees still remaining on its payroll, but refused to bargain regarding the employees transferred to the payroll of the partnership.

B. Interference, restraint, and coercion prior to the consent election

On or about October 1, 1945, during the initial stages of the CIO's organizational drive, employee Charles Spallino, the then president of the Five and Over Club, and employee John Levasco¹² were in

¹²Charles Spallino, herein called Spallino, has been an employee of the corporation in one of its various production and service departments for about 19 years. His brother Joseph Spallino is presently the plant superintendent of the corporation respondent. John Levasco has been continuously employed since 1936, except for a break in his service when he served in the United States Navy during World War II. He returned to work in April 1945 and was given the job as chief plant inspector, which he held until shortly after V-J Day, when he was transferred to a job as material expediter. During the latter period, he also, on occasions, served as an agent of the corporation in connection with the sale of surplus machinery at the plant.

The Five and Over Club was organized in 1936 by President O'Keefe for the alleged purpose of functioning as an employees' social and benefit or-

the office of Daniel O'Keefe, the president of the corporation respondent. Either Levasco or Spallino asked O'Keefe what action the Five and Over Club should take concerning the activities of the CIO or the A. F. of L. during the then current organizational drives. According to the testimony of O'Keefe, Spallino and Levasco, which is in general agreement, O'Keefe told the two employees that he would rather not have to deal with either of the Unions, but if he was obliged to, he would prefer to deal with the A. F. of L. in order that the company's name might be stricken from the latter's unfair list, thus assuring a better market for the company's products. O'Keefe then told them that he did not want to dictate the policy for the Five

ganization. All employees with over 5 years service, including office and clerical employees, were eligible to membership. Since its organization, Spallino served as vice-president for 4 years and as president for 3 years and was its president during the year 1945. It apparently engaged in some of the functions of a labor organization, because it sought to intervene in the representation case above-mentioned (56 N.L.R.B. 102) decided by the Board in April 1944, but its status was not determined in those proceedings because the petition was dismissed on other grounds. There are no allegations in the complaint regarding it, and it asserted no interest in this proceeding. The record shows that in February 1945, pursuant to a request from President O'Keefe, Spallino appointed a grievance committee, picked from members of the organization to present grievances on behalf of all employees of the corporation, and that as president of this organization he was permitted to leave his work, almost at will, to visit all departments of the plant in connection with the activities of the organization.

and Over Club and requested them to speak to Cecil Collins, the respondent's counsel herein, concerning the matter.¹³ A few days later, the two men met with Collins and engaged in a similar conversation with him. According to Spallino's version, which the undersigned credits, Collins told them: it looked as if one of the two unions would succeed in organizing the plant; that it would be better for the company if the A. F. of L. prevailed; that he would arrange to have an A. F. of L. representative meet with them in a few days; that a few days later John Roberts, a representative of the Stove Mounters, A. F. of L., came to the plant while Spallino and Levasco were working and requested a plant guard to call them to the plant entrance; that they met Roberts there and at the time Roberts handed them about 100 application cards; that after receiving the cards, Spallino proceeded to solicit other employees to sign some of the cards during working hours; and that a few days later Spallino returned about 38 to 40 signed cards to Roberts after signing his, Spallino's name on them as a witness to the applicants signatures.¹⁴

About 3 weeks before the election, according to the following uncontradicted testimony of Spallino

¹³The record shows that, in addition to representing the respondents as legal counsel at this hearing, Collins was also labor relations advisor for both of the respondents.

¹⁴Levasco gave no testimony concerning Roberts' visits to the plant in connection with the card transactions. Neither Collins nor Roberts testified at the hearing.

which the undersigned credits, he and Levasco were called to Collins' office and met several A. F. of L. representatives who were present there. The union representatives asked Spallino in the presence of Collins how the employees in the various departments generally expressed themselves in respect to A. F. of L. or CIO affiliation. Spallino told them that a considerable number of the employees favored the CIO and advised them to hold some A. F. of L. meetings for the employees and stated, at the time, that he could arrange to hire a hall near the plant to hold such meetings, whereupon Roberts, the Stove Mounters representative, authorized Spallino to make arrangements to rent the hall. The hall was rented by Spallino and thereafter A. F. of L. handbills were passed out at the plant inviting the employees to attend an A. F. of L. meeting to be held there about 2 weeks before the election. The meeting was attended by approximately 30 employees, and about a week later another A. F. of L. meeting was held at the same place.¹⁵

A day or two before the November 20 election, Spallino and Levasco met with President O'Keefe in his office and engaged in a conversation concerning the contents of a document that might be used either as the basis for a handbill to be distributed on behalf of the Five and Over Club before the

¹⁵Roberts or none of the A. F. of L. representatives present at this meeting were called to testify concerning it and Spallino's testimony was not refuted by Levasco in respect to these incidents.

election or as the basis of a speech before Five and Over Club members. O'Keefe, after considering the contents, told the two employees, after first suggesting some amendments to the statements made in the paper, that it would then sound too much like a speech that might be delivered by him and recommended that it not be used as he would personally deliver a speech to the employees before the election.

On November 20, 1945, shortly after the corporation's employees returned from lunch, O'Keefe caused all of them to be assembled in the plant and addressed them concerning the election to be held at 4:30 on that afternoon. In his speech he stated in substance, that although he thought all unions were bad, he believed it was up to the employees to decide for themselves which of the 2 competing unions was the lesser of two evils; that if the A. F. of L. won, the company could sell more of its products than it could if the plant was organized by the CIO; that if he were an employee working in the stove industry he would prefer to vote for the A. F. of L. because substantially all organized plants in the stove industry worked under A. F. of L. agreements; and that if an employee found it necessary to change his job he would be unable to get work in such union shops unless he first joined the A. F. of L. He ended his speech with a request that they all vote and to vote for one of the two unions on the ballot rather than for neither organization.

At 4:15 o'clock, and just prior to the election which began at 4:30 o'clock on that same after-

noon,¹⁶ Spallino called a meeting of the Five and Over Club in the plant.¹⁷ The meeting was opened by Spallino who introduced Levasco. Levasco made a speech stating that he had been a member of the A. F. of L. for a number of years, that substantially all stove factories had A. F. of L. contracts, requested all of those present to vote for the A. F. of L. in the election and also told them that the CIO could not shut off the company's supply of steel as allegedly had been threatened by that union if the plant did not go CIO. Immediately following the close of this meeting, the employees attending it, who thereafter cast ballots, went to the polls to vote. Spallino and Levasco were the two A. F. of L. observers at the election.

Conclusions

The above-described course of conduct by the corporation respondent discloses an intention to frustrate self-organization among its employees. Not only were Spallino and Levasco permitted openly to engage in pro-A. F. of L. activities on company time and property but such activities were actually sponsored and encouraged by Collins who certainly could only be regarded as an important figure in

¹⁶The day shift at the plant ended at 4:30 o'clock.

¹⁷Admittedly, pursuant to a request from Spallino, the foremen in the various plant departments announced the time and place of the meeting to the employees working under them. About 200 Five and Over Club members attended and were paid for the 15 minutes time spent at the meeting.

the hierarchy of the plant management. Moreover, O'Keefe's speech to the employees on the day of the election unmistakably warned the employees that their job security was contingent upon the success of the A. F. of L. in the election. The coercive nature of O'Keefe's speech is self evident.¹⁸ The corporation respondent's defense that O'Keefe's speech was protected by the constitutional guarantees of free speech is discussed in the next section and found to be without merit. Furthermore, permitting the Five and Over Club to hold a pro-A. F. of L. meeting in the plant, on company time, immediately prior to the opening of the polls likewise constituted interference with the right of employees freely to select their own bargaining representative.

Upon all the foregoing, and upon the basis of the entire record, the undersigned finds that the respondent, by its entire course of conduct, including the sponsoring of the A. F. of L. activities of Spallino and Levasco among its employees on company time and property, the questioning of Spallino and Levasco, in the presence of Collins, by A. F. of L. representatives regarding the union affiliations of the employees, O'Keefe's warning to the employees that their economic security depended upon the success of the A. F. of L. in the election and in permitting the holding of a pro-A. F. of L. meeting

¹⁸See Matter of A. J. Showalter Company, 64 N.L.R.B. and cases cited therein, especially N.L.R.B. v. Star Publishing Co., 97 F. (2) 465 (C.C.A. 9).

in the plant just prior to the opening of the polls, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The refusal to bargain and other acts of interference after the election

1. The November 27, 1945 speech of
President O'Keefe

On November 27, a week after the election, O'Keefe delivered a second pro-A. F. of L. speech to the respondent corporation's employees in the plant during working hours. On this occasion, he told them in substance that he was disappointed in the results of the election; that Merritt, Sr., the secretary and treasurer of the corporation respondent and W. J. Boyle, its vice president who previously had dealings with the CIO, were both discouraged and wanted to sell the business; that because many of the products made in the plant were generally installed by mechanics belonging to the A. F. of L., such products might just as well be stamped "made in Japan" if an A. F. of L. label on them was lacking; and that "if we wish to do business with the builders and in the San Francisco territory, we have two alternatives—to contract enough of our labor to a firm with an A. F. of L. contract that would be satisfactory to the A. F. of L. in order that they would take us off the unfair sheet—or to take advantage of the

possibilities to sell this business to someone who has an A. F. of L. organization." (Underscoring supplied.) Clearly this speech was an appeal to the employees to consider dropping their affiliation with their recently designated bargaining representative, the CIO, and to affiliate with the A. F. of L. It tends to explain the future course of conduct followed by the respondents, discussed in detail below.

The corporation respondent contends that the statements made by O'Keefe in both of his speeches were not violative of the Act, and were privileged under his constitutional right of free speech. The undersigned does not agree, for O'Keefe in both speeches unmistakably warned the employees that their economic security depended upon the ability of the corporation to effect some arrangement that would permit it to sell its products free of the threatened or existing boycott of the A. F. of L. and clearly constituted an appeal to them to affiliate with the A. F. of L., thus constituting interference with their right freely to select a bargaining representative of their own choice. The coercive nature of the statements made in both of the speeches are self-evident and hence, do not fall within the constitutional guarantee of free speech.¹⁹ That O'Keefe's warning was prompted by an apprehension, even if well founded, that its business would suffer unless it was able to manufacture its products in a manner satisfactory to the A. F. of L. does

¹⁹See *N.L.R.B. v. Virginia Electric & Power Co.*, 319 U.S. 533.

not alter the force or effects of his statement²⁰ upon the employees in the exercise of their statutory rights, or remove it from the ambit of the Act.²¹ It is now well settled that an employer's fear of economic reprisal, or loss of business, resulting from the unionization of his employees, does not justify a commission of unfair labor practices.²² In any event, whether or not O'Keefe's speeches were per se violative of the Act, they were part and parcel of a pattern of course of conduct the total effect of which was an interference with the rights of the employees freely to select their own bargaining representatives, and, as such, were not protected by the constitutional right of free speech.

²⁰See *N.L.R.B. v. Trojan Powder Co.*, 135 F. (2d) 337 (C.C.A. 3), cert. den. 320 U.S. 768.

²¹See *N.L.R.B. v. Polson Logging Co.*, 136 F., (2d) 314 (C.C.A. 9).

²²See *N.L.R.B. v. Star Publishing Co.*, 97 F. 465 (C.C.A. 9), in which the Court stated: "* * * The Act prohibits unfair labor practices without regard to the factors causing them * * * It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer." See also *N.L.R.B. v. Gluek Brewing Co.*, 144 F. (2d) 847 (C.C.A. 9); *Matter of A. J. Showalter Co.*, 64 N.L.R.B. No. 96, and *Matter of Lakeshore Electric Mfg. Corp.*, 67 N.L.R.B. No. 105.

2. The appropriate unit and the unions majority representation therein.

As noted above, the Regional Director on November 28, 1945, issued his Consent Determination of Representatives, in the earlier representation proceeding²³ finding that, all production and maintenance employees employed at the Los Angeles plant of the company, excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern maker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, pursuant to the terms of the consent election agreement previously entered into on November 14, 1945. No objections were raised to the conduct of the ballot or to the determination of the Regional Director.

Counsel for the respondents, however, now asserts that the election was invalid because Spallino, one of the A. F. of L. observers at the said election, admitted during the present hearing that he favored the C.I.O. and was not in good faith trying to advance the cause of the A. F. of L. at the time the

²³Matter of O'Keefe and Merritt Company and United Steelworkers of America, Stove Division, Local 1981, CIO, Case No. 21-R-3101.

election was held. The undersigned finds no merit in this contention. The respondent has no right to dictate to a participating union in a Board election whom the latter shall appoint as observers, and certainly the Board is under no duty to police the outside activities of observers selected by participating unions to act at elections. There was no substantial evidence in the record indicating that Spallino engaged in any improper conduct at the election that would justify setting it aside.

The undersigned finds, in accordance with the previous determination of the Regional Director, as noted above, that all production and maintenance employees at the Los Angeles plant of the corporation respondent excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expediters; pattern makers and pattern maker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. He further finds that at all times material herein, the CIO was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit and that, pursuant to the provisions of Section 9 (a) of the Act, the CIO was at all such times, and now is, the exclusive representative of all of the employees in the aforesaid unit for purposes of collective bar-

gaining with respect to rate of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain; the scheme devised for the purpose of attempting to circumvent bargaining with the CIO.

a. The bargaining negotiations with the CIO.

Following its certification, the CIO requested a bargaining conference with the corporation respondent for the purpose of negotiating a collective bargaining agreement. Cecil Collins, counsel and labor relations advisor for both of the respondents, was delegated to represent the corporation at the bargaining negotiations. On or about December 15, 1945, Collins met with CIO Representative John Despol, at Collins' office in the plant. On this occasion Despol presented a proposed agreement. Collins agreed to consider its terms and provisions and to meet again with Despol after he had had an opportunity for study. Later in December, 1945, and shortly before Christmas Day, a second meeting was held in Collins' office. On this occasion Despol pressed the CIO's demand for a 25-cent-per-hour general wage increase and for a closed shop. Collins took the position that the company would not grant the 25-cent general wage increase but would agree to a wage increase equal to or better than the then going rates in the industry. He also turned down the closed-shop provision and stated, in the alternative, that the company would grant a maintenance of membership clause coupled with a 15-day escape

clause, neither of which proposals were acceptable to the CIO. After further discussion the meeting ended with an understanding that the corporation would further consider the contract proposals and resume negotiations in a few days.

On January 3, 1946, at the third bargaining conference held also in Collins' office, Despol was present for the CIO, while Collins, and Fred Rotter, the corporation's personnel manager, were present as representatives of the corporation. Collins also invited employees Levasco, Frank Doyle, Sanchez and Derosé, all of whom except Doyle were affiliated with the A. F. of L. to attend the meeting as observers. The employee group remained present during the entire meeting. Collins opened the negotiations by stating in the presence of the A. F. of L. adherents that the company would not grant a closed-shop to the CIO but at most would only agree to a maintenance of membership provision with a 15-day escape clause. Also during this meeting, according to the testimony of Rotter, Levasco and Doyle, Collins told Despol that further negotiations regarding a contract would probably be a waste of time, because the corporation was about to formulate a plan to transfer its manufacturing operations to the partnership respondent and that if the deal were consummated there would be few employees left for the CIO to represent; that Despol then accused Collins of "kidding" him, told Collins the CIO had expended large sums of money in organizing the plant and would strike if an agreement was not

signed; and that Collins then told Despol if the deal went through he would endeavor to have the company reimburse the Union for its organizing expenses if the latter would refrain from striking the plant and litigate any controversy between the company and the CIO before the Board or the courts. Despol denied that any such or similar conversation took place at this meeting, but further testified that, several weeks later, Collins on two occasions had personally offered Despol money to sell out the CIO and permit the A. F. of L. to take over the plant.²⁴ Based upon a consideration of all of the evidence in the record, especially the statements made by O'Keefe in his November 27 speech in which he publicly announced to all of the employees that, even at that time, such a plan was being considered, and from his observation of the witnesses, the undersigned accepts the above version of the conversation as testified to by Rotter, Levasco and Doyle as credible and finds it to be true. After further general discussion between Collins and Despol concerning seniority, holiday pay and night shift bonuses without arriving at any definite understanding, the meeting closed with an understanding that the negotiations would be continued on January 8.

Employees Cunningham, Castro, Daley and Arlotti, all A. F. of L. adherents, attended the January 8 meeting in response to an invitation from Collins. Despol objected to the presence of any

²⁴These two later incidents are further discussed below in Section III, E.

committee purporting to represent the A. F. of L. He did not insist on their leaving because he said the discussion would be limited to procedural questions not concerned with wages, but stated that from then on he would not consent to bargain in the presence of such a committee. No definite and binding commitments on any substantial matters were agreed upon at this meeting. At the close of the meeting, Despol requested the company to submit written counter-proposals to all provisions in the proposed CIO agreement not acceptable to the company. Collins agreed to do so within one week but none were ever submitted to the CIO.

The last bargaining conference was held at Collins' office in the plant on January 25, 1946, attended only by Despol and Collins. The question of wages and a vacation plan was discussed. Collins on behalf of the corporation respondent tentatively agreed to grant wage increase of from 10 to 15 per cent over existing rates then being paid in the industry, varying according to job classifications, but the CIO stood firm on its former demand of 25 cents per hour general increase. The meeting closed with a further demand from Despol that the company submit written counter-proposals to every provision in the CIO's proposed agreement not acceptable to the company. As noted above, and further discussed below, the corporation respondent transferred approximately 300 of about 340 employees constituting the unit found above to be appropriate to the partnership respondent on Jan-

uary 31, 1946. Thereafter in response to a further request to bargain, directed to the corporation respondent, the latter agreed to resume bargaining negotiations respecting the approximately 40 employees still remaining on its payroll, but refused to bargain regarding the transferred employees.

b. The joint liability of both companies in respect to the refusal to bargain and other unfair labor practices.

During the month of January, 1946, while the CIO was vigorously pressing its demands for a collective bargaining agreement, as discussed above, the corporation and the partnership respondents were proceeding to carry out a plan to effect a transfer of the corporation's manufacturing operations at the plant to the partnership and at the same time the partnership was conducting preliminary negotiations with the craft unions regarding a collective agreement for all production employees of both respondents at the plant although at the time, it had only 15 employees on its pay-roll. Admittedly, the certification of the CIO was, at the least, one of the motivating causes resulting in those activities, as President O'Keefe testified:

Q. You knew there was an election conducted at your factory by the National Labor Relations Board, did you not? A. Yes.

Q. And do you know who won the election?
A. Yes.

Q. Did that election have anything to do with this leasing?

* * * * * *

The Witness: Well, it probably did something.

Q. (By Mr. Collins): What did it have to do with it?

A. Well, we were on the unfair list with the A. F. of L. and all our business come, or not all of it but a lot of it was done with the Building Trades, and I figured that we could lease to someone who would work under a contract, that would be satisfactory to the A. F. of L., we would probably be getting off the unfair sheet.

By an agreement dated January 2, 1946, but not signed until January 31, 1946,²⁵ the corporation transferred the manufacturing operations together with the employees engaged in such operations to the partnership. In summary the agreement provides: the corporation shall let and the partnership shall take over all of the plant building, excepting therefrom, for the use of the corporation, all front office space, the service department and warehouse space, including all production machinery and equipment for a term beginning January 31, 1946, [underscoring supplied] and ending December 31,

²⁵Although the record fails to show the actual date of signing, it does show that the closed-shop agreement with the craft unions, which also bears the date of January 2, 1946, as the apparent date of execution, was not signed until January 31, 1946, the date of the beginning of the term provided in the lease. Consequently, the undersigned concludes and finds that both agreements were signed on the same day, namely, January 31, 1946.

1946; that the partnership will manufacture all products required of it by the corporation on a cost-plus basis, the corporation to furnish all raw materials required for processing and to keep the premises in repair; that all employees of the corporation affected by the change in operations shall be hired by the partnership with no loss in wages or other advantages, including seniority; and that the partnership respondent, absent the express consent of the corporation respondent, will manufacture only those items which the lease expressly requires it to make for the corporation. The agreement further provides that the corporation shall bear the additional expense required of continuing certain employee benefits, namely, the pension fund, paid up insurance, contributions to the Five and Over Club and Christmas bonuses, which had previously been established by the corporation company at the plant. Clearly, by making these contributions to employees then on the partnership respondent's pay-roll the corporation respondent is still contributing to the said employees what may be regarded as supplementary wage inducements. In addition, President O'Keefe, in another speech delivered to the employees on February 1, 1946, the day after the transfer agreement and the union shop contract with the A. F. of L. were signed, told them that the partnership would formally take over all manufacturing operations on February 4, 1946; that the corporation would continue to operate the sales, service and shipping departments; that the partnership

company was granting increased rates on all manufacturing operations;²⁶ and that the corporation company would pay to all of the transferred employees back wages from the period from January 1 to February 4, 1946, based on the difference between what they would receive under the new wage scales and the scales in effect during January, 1946, these payments to be made on March 1, 1946, to all transferred employees continuing to work for the partnership respondent until March 1.²⁷

On the basis of the foregoing facts, the undersigned concludes and finds that not only did the transferred employees receive contributions of wages from both employers subsequent to the transfer of operations, but the promise of the back pay awards constituted further assistance to the craft unions for it is obvious that this promise was made to induce all employees who had not previously joined one of the craft unions promptly to do so.

Furthermore, the facts above clearly show: Respondents are engaged jointly in conducting a single business enterprise, the effective control of which is vested in the corporation respondent; that not only did the corporation respondent, both before and after the consent election, assist the craft unions in their efforts to organize the employees, but the partnership respondent also rendered material

²⁶Wage increases were granted to the craft unions in the union shop contract.

²⁷The contract provided that all employees covered "shall within 15 days become and remain members" of the craft unions, parties to the contract.

assistance to the said craft unions by joining in the scheme to divide up the operations of the corporation respondent's business in order to circumvent self-organization of the employees. The record plainly shows that the partnership respondent did not wait until the transfer of the operations and of the employees involved was an accomplished fact but proceeded to negotiate a collective bargaining agreement covering a group of employees despite prior knowledge that they had previously designated the CIO as their representative. Since the certification, as noted above, had been made on November 28, 1945, it certainly continued in full force and effect until January 31, 1946, when the union-shop contract was signed with the craft unions. The decisions of the Board and of the Courts, extending over a period of many years have well established that loss of membership by a designated union during the period when the employer is refusing, contrary to the provisions of the Act, to recognize and deal with it as the representative of its employees, will not be considered as an impairment of the right of the certified union to continue to represent the employees, nor a termination of the obligation of the employer to bargain with it.²⁸

Certainly the purpose of the Act may not be circumvented by a scheme rigged with the purpose and intent of setting aside the certification of a col-

²⁸See Board's Supplemental Decision in Matter of Karp Metal Products Co., Inc., 51 N.L.R.B. 621; Frank Bros. Co. vs. N.L.R.B., 321 U.S. 702.

lective bargaining representative selected as the result of self-organization by employees.²⁹ It would be implausible to find that the transfer of part of his plant operations by an employer subject to restraint under the Act relieved transferees with knowledge of his burdens.³⁰

Since the record fails to show that the partnership respondent participated in any dealings concerning a transfer scheme prior to January 3, 1946, the undersigned finds that it is not responsible for any of the unfair labor practices committed before that date. He further concludes and finds, however, that respondents are responsible and liable for any unfair labor practices committed by either on or after January 3, 1946, for it is obvious that the activities of the respondents since that time are so related and intermingled that findings and an order directed solely against the corporation respondent would be neither accurate, nor afford an effective remedy.

c. Conclusions with respect to the refusal to bargain.

Clearly on the basis of the facts above, the respondents at all times on and after January 3, 1946, refused to bargain with the CIO, the designated

²⁹Cf. *Matter of Norwich Dairy Company, Inc., and Vermont Dairy Company, Inc.*, 25 N.L.R.B. 1166.

³⁰Cf. *N.L.R.B. vs. Kiddie Kover Mfg. Co.*, 105 F (2d) 179 (C.C.A. 6).

representative of the production and maintenance employees in an appropriate unit, as found above. Not only did the corporation respondent invite unauthorized employees to attend a bargaining conference with CIO held on that date, which in itself clearly indicates a refusal to bargain,³¹ and later the corporation respondent, although specifically requested to submit counter-proposals to the demands of the CIO, at all times thereafter, refused and neglected to do so. Of course, contemporaneous bargaining with the A. F. of L. with respect to the employees in the appropriate unit in itself constituted a refusal to bargain with the CIO.

Furthermore, as shown above, the respondents availed themselves of the opportunity presented to use the January 3 meeting as a sounding board to announce the scheme to shift over the plant operations to the partnership respondent. In view of O'Keefe's November 27, 1945, speech to the employees, discussed previously above, the announcement made at the meeting clearly was made with the purpose and intent of notifying the employees that they were to be given another opportunity to select the A. F. of L. as exclusive bargaining representative. Following the announcement, the partnership respondent proceeded to negotiate a union-shop contract with the A. F. of L. and IAM group, as more particularly discussed below, before the

³¹Cf. *Matter of Lennox Furnace Co., Inc.*, 20 N.L.R.B. 962; *Matter of Joseph Blackburn Products Corporation*, 21 N.L.R.B. 1240.

deal to transfer the plant operations was fully worked out and closed.

The record shows that the partnership respondent had about 15 production employees on its payroll from November 20, 1945, the date of the consent election in the plant, until January 31, 1946, when the transfer of operations and personnel was effected. The terms of the lease agreement between the corporation and the partnership precludes the latter from engaging, on the leased premises, without express permission from the corporation, in any manufacturing operations other than those customarily performed by the corporation. Hence, the undersigned finds that the 15 partnership employees of necessity have been absorbed in production and maintenance work now being jointly conducted in the plant by both of the respondents. Thus, the 15 are no longer a separate and identifiable group and properly form a part of the production and maintenance unit which has been found to be appropriate. Due to the small number involved, the votes of the 15 could not have affected the results of the consent election or rendered it inconclusive. But whether or not the 15 partnership employees now form a part of the appropriate unit does not affect a finding that the respondents have refused to bargain. There was no specific request made of the partnership respondent, as such, to bargain collectively with the CIO but such demand had been made on the corporation respondent, and is deemed, for the purposes of this proceeding, to constitute a continuing demand on the corporation,

which is conducting the same business in the same plant with the same personnel as the "Pioneer Electric Company."³² Further, the scheme of transferring operations and personnel was motivated by a determination to avoid bargaining with the CIO. Since the partnership entered in the union-shop contract at about the same time as the 300 former employees of the corporation were transferred to it, it is obvious that a formal request to bargain concerning them would have been merely an idle gesture pending the setting aside of the union-shop contract found below to be invalid. Upon the basis of the foregoing facts and the entire record, the undersigned finds that on January 3, 1946, and at all times material thereafter, the respondents have failed and refused to bargain collectively with the duly designated majority representative of their employees in an appropriate unit, thereby interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The invalid closed shop contract.

On some occasion between November 27, 1945, and February 1, 1946, the respective dates of O'Keefe's second and third speeches to the employees, Collins delivered a similar speech to them at a meeting held at the plant during business hours. Collins, on this

³²Cf. *Matter of Norwich Dairy Company, Inc., and Vermont Dairy Company, Inc.*, 25 N.L.R.B. 1166.

occasion, stated in substance: when Mr. O'Keefe outlined the company's position to them a short time ago, he explained to them that while he was not trying to sell either union, he felt that the A. F. of L. was the better choice, because a larger market for the sale of products would be opened up if they were working under an A. F. of L. agreement; that he (Collins) had been bargaining in good faith with the CIO and offered to pay the highest rates paid in the stove industry in the area;³³ and that although the company was willing to do everything possible to maintain peaceful labor conditions at the plant, none of its employees would be forced into joining any union.³⁴

The partnership respondent was first brought into the picture on January 3, 1946. The bargaining conference held on that day between the corporation respondent and the CIO, was selected as a sounding board to announce to a group of employees invited to attend by the corporation that plans were under way to transfer all manufacturing operations to the partnership, and that when this deal was consummated there would be few employees left

³³Obviously, Collins' speech was delivered sometime after December 15, 1945, the date of the first bargaining conference.

³⁴He was obviously telling them that a union-shop contract would not be signed with the CIO, their certified representative, yet a few weeks later a union-shop contract was signed with the craft unions absent a clear showing of majority representation.

on the pay-roll for the CIO to bargain for. Clearly in view of the background of past unfair labor practices, as found above, this was but another request to the employees to join the A. F. of L.

Shortly thereafter, in January, 1946, bargaining conferences between the partnership company and the craft union commenced. Wilbur Durant, the managing partner of the partnership, testified that he delegated authority to Collins,³⁵ sometime during January, 1946, to negotiate an agreement between the partnership and the craft unions covering all production employees at the plant;³⁶ that, at the time, he (Durant) knew that the CIO previously had been certified as the majority representative of the corporation employees; that following such bargaining conferences between Collins and the craft union representatives, he and Collins met with the craft union representatives at Durant's office on January 31, 1946,³⁷ and in about 5 minutes the union-shop contract was signed by all parties; and that prior to signing the contract no proof had

³⁵Collins, the attorney of record for respondents, was also their labor relations advisor.

³⁶At the time these negotiations were going on the partnership had only 15 production employees on its pay-roll. Durant further testified that about 300 of the corporation's production employees were transferred over to its pay-roll. This group of 300 constituted about 90 per cent of all employees in the unit covered by the CIO's certification.

³⁷It is noted that the contract also bears the date of January 2, 1946, as the purported date of execution, as did the transfer agreement above mentioned.

been required of the Unions to show that they, in fact, represented a majority of the employees involved, because he had been assured by some of the older employees of the corporation that the A. F. of L. had signed up a majority and accepted the statements as true.

The craft unions offered no proof respecting their designations as bargaining agents at the hearing, nor does the record contain any evidence regarding the bargaining negotiations between the partnership company and the unions, parties to the contract, other than that appearing in Durant's above testimony.

In respect to this issue, the Painters interposed a special defense, namely, that because the records fail to show that it specifically participated as a party in the November 20, 1945, consent election, it was not bound by the designation of the CIO as a result of those proceedings, and that consequently any evidence herein is not binding on it. The undersigned finds no merit in this contention. The record shows that the names of four employees classified as painters appeared on the eligible list of voters used at the consent election, that these four employees voted and the votes were not challenged, and that since the Los Angeles Metal Trade Council, A. F. of L., was named on the ballot to protect and conserve the interests of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the painters at the time were duly protected.

Conclusions

The contract was the culmination of a design on the part of the respondents to select the A. F. of L. as the exclusive representative of their employees as a means of circumventing its obligation to bargain collectively with the CIO as the majority representative of the employees in an appropriate unit. In its persistent efforts to thwart the self-organization of its employees, the corporation respondent after its failure to accomplish the defeat of the CIO at the election enlisted the aid of the partnership to join with it in further attempts to induce the employees to select the A. F. of L. as their exclusive representative. Clearly, in view of the background of past unfair labor practices, as found above, the announcement made at the January 3, 1946, bargaining conference can be considered only as an effort to destroy the CIO and to bring home to the minds of the employees that they would soon be given another opportunity to select the A. F. of L. as their bargaining agent. Strong support for this last conclusion is evidenced by the unusual conduct of the partnership in proceeding to recognize the craft unions as bargaining representative of some 300 workers not yet on its payroll, concerning whom no evidence of majority representation had been submitted by the craft unions, and who already had selected the CIO to represent them.

Assuming that the craft unions could have proved a majority at the time the contract was entered into, such majority must be deemed vitiated by the

interference of the respondents in connection with the solicitation of such membership. At no time material did the craft unions represent an uncoerced majority of the employees in the plant. The contract was made with labor organizations which were assisted by unfair labor practices.

Accordingly the undersigned finds that by persuading and inducing their employees to join the craft unions, the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. The alleged attempts of the respondents to bribe CIO representatives

The complaint as amended alleges, in substance, and the answer denies that the respondents interfered with the rights of the employees to self-organization by attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the CIO, to surrender the CIO's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO.

Despol, the CIO representative at all bargaining conferences held, testified on direct-examination that at two conversations held with Collins at a restaurant and cocktail bar in Los Angeles, on January 25 and February 1, 1946, that Collins told him during the first conversation, that he would

give Despol \$1000 from his legal fees in the case if he would consent to the holding of another consent election among the employees and cease all CIO activities at the plant, because the company was obligated to enter into a contract with the A. F. of L. in order to avoid the boycotting of its products; that, he, Despol told Collins he could not make such a deal; that at the second meeting at the same place, on which occasion Conway was present with Despol, Collins made substantially the same offer to both Despol and Conway, and later on this occasion, raised his offer to \$1500; and that on February 4 Collins called Despol on the telephone and renewed the offer.³⁸

During his cross-examination, Despol, in substance, admitted that his personal relations with Collins had been friendly over a period of several years, that they had frequently gone into a bar together to indulge in alcoholic stimulants, that even during the present hearing they had taken some friendly drinks together following the end of the days session on several occasions. On rebuttal, Despol denied that prior to January 25, 1946, Collins had ever broached the subject regarding the transfer of operations to the partnership, or had previously stated that another election would probably result in a change of representatives. The un-

³⁸It is noted that Despol also testified that on the second meeting at the bar when Despol asked Collins how much President O'Keefe would "kick in," Collins shook his head indicating that O'Keefe was not involved in the alleged transaction.

dersigned concluded, as found above, that Collins and Despol participated in a similar conversation during the January 3, 1946, bargaining conference in the presence of several employees who had been invited to attend the meeting by Collins, thereby discrediting, at least in part, Despol's above testimony. Collins gave no testimony at the hearing.

On the basis of the foregoing facts and the entire record the undersigned deems that Despol's version of the above incidents have been overly emphasized and exaggerated. It is inconceivable to the undersigned that if Despol entertained a sincere conviction that Collins had offered him a bribe to sell out the CIO, that Despol would continue his friendly relations with Collins to the extent of still going into cocktail bars with Collins. The undersigned finds that the allegation has not been sustained by the proof.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents and each of them as set forth in Section III above, occurring in connection with the operations of respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that the respondents have engaged in certain unfair labor practices affecting com-

merce, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

The respondents illegal conduct discloses a purpose to defeat self-organization among their employees motivated primarily by fear of an A. F. of L. boycott. For example, shortly after the election at the plant at which time the respondents learned that the CIO had been designated the majority representative of the production and maintenance employees, it was sought to coerce them in the exercise of the rights guaranteed under the Act by warning them, in effect, that unless they withdrew from affiliation with the CIO and affiliated with the A. F. of L. their economic welfare would be jeopardized. Thereafter, as a result of the scheme or plan adopted by the respondents which culminated in the transfer of the manufacturing operations in the plant from the corporation respondent to the partnership respondent, the respondents succeeded in inducing many of their employees to shift their union affiliation, thus circumventing the purposes of the Act. That the conduct of the respondents was motivated by fear of an A. F. of L. boycott is no justification for a violation of the Act.³⁹ Since the respondents' conduct in these respects interfered with, restrained, and coerced their employees in the exercise of the right to self-organization, to form, join, or assist labor organi-

³⁹See matter of Lake Shore Electric Mfg. Corp., et al., 66 N.L.R.B. No. 105.

zations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, this conduct violated Section 8 (1) of the Act quite apart from the respondents refusal to bargain with the CIO.

In connection with the procedures followed in carrying out the scheme to defeat self-organization among the employees, it is apparent that the membership of the craft unions involved herein was procured with the assistance of the respondents' unfair labor practices. Consequently, the craft unions' union-shop contract with the partnership is void and of no effect. The undersigned will therefore recommend that the respondents give no effect to it.

Having also found that the respondents have refused to bargain collectively with the CIO as the certified exclusive representative of all production and maintenance employees at the plant,⁴⁰ the un-

⁴⁰It is noted that the partnership for sometime prior to the November 20, 1945, election, until January 31, 1946, had only 15 production employees on its pay-roll, and that these employees were not included in the certified unit. However, since the partnership's pay-roll was expanded by the addition of 300 production employees on January 31 and, in the absence of any showing to the contrary, a fair inference arises that the 15 former employees on the partnership pay-roll would have substantially similar interests concerning rates of pay and working conditions as the transferred employees. The fact that the said 15 employees were not included in the certified unit does not affect the findings herein.

dersigned will recommend that respondents, upon request, bargain collectively with the CIO.⁴¹

Upon the basis of the foregoing findings and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, a co-partnership doing business as Pioneer Electric Company, are jointly employers of the employees here involved within the meaning of Section 2 (2) of the Act.

2. United Steel Workers of America, Stove Division, Local 1981, C.I.O.; Stove Mounters International Union of North America, Local 125, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L.,

⁴¹See the Board's Supplemental Decision in Matter of Karp Metal Products Co., Inc., 51 N.L.R.B. 621; Frank Bros. Co. vs. N.L.R.B., 321 U.S. 702.

are all labor organizations within the meaning of Section 2 (5) of the Act.

3. By refusing on January 3, 1946, and at all times thereafter, to bargain with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the certified exclusive representative of its employees in the unit heretofore found to be appropriate, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case the undersigned recommends that the respondents, O'Keefe and Merritt Manufacturing Company, a corporation, and L. G. Mitchell, W. J. O'Keefe, and Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, their officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Urging, persuading, warning or coercing its employees to join the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., and from encouraging membership in any of the above named organizations, discouraging membership in United Steelworkers of America, C.I.O., or any other labor organization of their employees;

(b) Recognizing the A. F. of L. labor organizations and the I.A.M. named in the preceding paragraph, 1 (a), of these Recommendations, or any of them, as the exclusive representative of their employees for the purposes of collective bargaining unless and until said organizations, or any of them shall be certified by the National Labor Relations Board as the exclusive representative of such employees;

(c) Giving effect to the union-shop dated January 2, 1946, and signed on January 31, 1946, with the said labor organization named above in paragraph 1 (b) of these Recommendations, or any

modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;

(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents within the above found appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representatives of their employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions

of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(b) Bargain collectively upon request with the United Steelworkers of America, Stove Division, Local 1981, C.I.O., as exclusive representatives of all production and maintenance employees at the Los Angeles plant of the respondents within the above found appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment; and if an understanding is reached, embody such understanding in a signed agreement;

(c) Post at the respondents' plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of the said notice to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondents' representatives, be posted by the respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the receipt of this Erratum to the Intermediate Re-

port what steps the respondents have taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Erratum to the Intermediate Report, respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondents to take the action aforesaid.

The undersigned further recommends that the complaint be dismissed insofar as it alleges that the respondents violated the Act by attempting by offers of payment of money to influence representatives of the CIO to surrender the CIO's position as the exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four

copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

Dated at Washington, D. C., this 4th day of June 1946.

/s/ HENRY J. KENT,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with the United Steelworkers of America, Stove Division, Local 1981, C.I.O., as exclusive representative of all the employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is: All production and maintenance employees at the Los Angeles plant of the respondents excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern maker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

We will not recognize the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as

the exclusive representative of any of our employees for the purpose of collective bargaining, or give effect to the contracts now existing with said organizations, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of our employees.

We will not urge, persuade, warn or coerce our employees to join any of the A. F. of L. unions above-named, and we will not discourage membership in United Steelworkers of America, C.I.O., or any other labor organization, or encourage membership in any of the above-named A. F. of L. unions, or any other labor organization.

All our employees are free to become or remain members of United Steelworkers of America, C.I.O., or any other labor organization.

O'KEEFE & MERRIT MANU-
FACTURING CO.,
Employer.

PIONEER ELECTRIC
COMPANY,
Employer.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

**ORDER TRANSFERRING CASE TO THE
NATIONAL LABOR RELATIONS BOARD**

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.

It is hereby ordered, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 3, as amended, that Case No. 21-C-2689 be, and hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., May 31, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

[Affidavit of service by mail attached.]

[Title of Board and Cause.]

**REQUEST FOR PERMISSION TO ARGUE
ORALLY BEFORE THE BOARD**

To the National Labor Relations Board, Washington, D. C.:

Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local

374, affiliated with the American Federation of Labor, and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, hereby request permission to argue orally before the Board their exceptions to the Intermediate Report filed by the Trial Examiner in the above entitled matter which said Intermediate Report is dated May 31, 1946, and also request permission to argue orally the matter of the approval of such report and the order of the Board to be made in this matter.

Dated in Los Angeles, California, this 6th day of June, 1946.

ARTHUR GARRETT,
JOHN L. HARRIS.

By /s/ JOHN L. HARRIS,

Attorneys for the Petitioning
Unions.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 10, 1946.

Telegram

Official Business—Government Rates
(Copy Copy Copy)

Am sending airmail exceptions to intermediate report of trial examiner in O'Keefe and Merritt Mfg. Co. and Pioneer Electric Co. and United Steel Workers of America Stove Division Local 1981 CIO et al case number 21-C-2689 request extension to

June 25 of time file brief in support of exceptions
Please wire collect.

ARTHUR GARRETT,
Attorney for Stove Mounters
Moulders and Carpenters.
455P

1981 CIO et al 21-C-2869 25 of Time.

United States of America
Before the National Labor Relations Board
Washington, D. C.

Case No. 21-C-2689

In the matter of
O'KEEFE AND MERRITT MANUFACTURING
COMPANY, et al, etc.,
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al., etc.

EXCEPTIONS TO INTERMEDIATE REPORT
AND MOTION TO AMEND SAID REPORT

The Respondents herein file their exceptions to the Intermediate Report of the Trial Examiner in the above matter, and moves that certain portions of said report be deleted, and that there be added to said Report certain additional matters, all as hereinafter appears (the Intermediate Report will hereinafter be referred to as the Report for brevity), to wit:

I.

The Respondents excepts to lines 19 and 20 on page 2 of said Report wherein the Trial Examiner states that copies of the complaint were served upon the Respondents and moves that the Report be amended to read that copies of the complaint were served upon certain of the Respondents.

II.

The Respondents except to line 25 on page 3 of said Report wherein it is stated that the Respondents were represented by counsel and participated in the hearing and moves that it be amended to state that certain of the respondents were represented by counsel only those who were properly served with process in accordance with the rules of the National Labor Relations Board and the procedural rules of the Federal Courts with reference to service of process.

III.

The Respondents except to lines 25 to 35 on page 5 of said Report and moves that said report be amended to show the actual cash investment of each of the partners, i.e., \$15,000.00 each, with the exception of Mr. Durant who invested \$30,000.00.

Respondents except to lines 24 to 30 on page 7 of said report and moves that said report be amended to show that the Pioneer Electric Company agreed to consent to a consent election and renewed the offer at the time of hearing (see offer of proof.)

IV.

The Respondents except to foot note 11 on page 7,

lines 33 of said report and move that the Report be amended to show that at the time the election took place the plant was going through a change over period and very few regular employees were on the pay roll, a large number of them being transitory day laborers. That the normal number of employees is approximately 600 to 800, less than 300 on pay-roll and voting.

V.

The Respondents except to lines 14 to 26, page 8 of said report and move that this matter be deleted and that the testimony of John Levasco be inserted instead, which testimony is a flat contradiction of the testimony of Spallino. Spallino on cross examination was shown to have testified falsely, was biased and according to his own testimony that although he was ostensibly working for the A. F. of L. he was not doing so good in faith. Respondents moves that the report be amended to read that Spallino's version cannot be accepted by reason of his bias and the fact that he is not a person to whose testimony any credibility can be given because he has shown by his conduct that he betrayed all of the A. F. of L. employees who were dependent upon him and trusted him to protect their interests in the election and for that matter in their organizing activities. That the witness Spallino could not remember when World War II started or when World War II ended but that he had an excellent memory for fine details that were helpful to his side of the controversy.

Respondents move that line 29 to 42 on page 8 be deleted and that the condensed testimony of Mr. Levasco be substituted for the same reasons as set forth above. There is no showing that the said Levasco had any interest in the proceeding other than to testify as to the truth; that he is a more credible witness.

The Respondents except to lines 45 to 65 on page 9 and lines 1 to 24 on page 10 of said report for reason that the conclusions drawn are based entirely upon the testimony of Spallino, a witness to whom no credit should be given by reason of the fact that he was biased, prejudiced and faithless to his trust and moves that the conclusion should be that the company adopted a hands off policy, permitted both sides to make speeches and organize fully within the plant and elsewhere. That both the A. F. of L. and CIO were making speeches and that both were accorded equal facilitation to make speeches both outside and within the plant. That anyone who wanted to talk or call a meeting was accorded that privilege.

Respondents except to lines 1 to 20 of page 11 of said report and move that said lines be deleted and the following be substituted in its place:

That nothing in any speech of Mr. O'Keefe's or Mr. Collins was of a threatening or coercive nature, that the employees would not be able to decide the issues fairly without an expression of opinion from all parties affected. That Mr. O'Keefe and Mr. Collins had a constitutional right to make a fair analysis of the situation and no inference of a plan

to illegally interfere with the CIO's organizing drive can or should be drawn from these speeches. That the speeches did not constitute a pattern which was followed to exclude the CIO; that a legal right exists to speak and a legal right exists to make leases, contracts, etc. That the exercise of legal rights can not be so construed as to make their results illegal.

VI.

The Respondents except to lines 28 to 30 of page 12 of said report and move that the said lines be deleted and the following be substituted that Spalino, a trusted watcher for the A. F. of L. was secretly cheating the A. F. of L. and assisting the CIO, a great breach of trust and faith.

Respondents further except to lines 31 to 50 of said report and move that the same be deleted and that the Board find that the election was not a fair one, because the only watcher at the polls were CIO agents planted there in breach of faith.

VII

The Respondents except to lines 23 to 26, page 13 of said report and move that same be deleted and the report show that Levasco was asked to bring any employees who wanted to come to the meeting, either CIO or A. F. of L. because the CIO organizers were conducting secret negotiations.

Respondents except to lines 50, etc. page 13 and move that the following be added, that since Mr. Despol was put on notice in ample time he should have asked either for a cross check or a consent

election to determine whether or not the majority of the employees of the Pioneer Electric Co. as of that date, i.e., sometime in January or February of 1946, wanted the CIO and whether he represented a majority of the employees of the Pioneer Electric Company. Respondents move that the following be added to line 26 on page 14 of said report:

that although Despol knew that a transfer of employees was to be made to Pioneer sometime in November of 1945 and that they were actually transferred in January of 1946, he made no request to bargain for employees of Pioneer Electric Company nor did he request a check off or election at any time.

Respondents except to line 40, page 14 of said report and move that the expression "at the least" be deleted and in its place instead be inserted "at the most." Respondents move that the following be added to line 6 on page 15 of said report that other reasons for the transfer was that a plan had been under consideration for at least two years to turn over the manufacture of gas ranges to Mr. Durant. That this plan could only be put into effect when the war ended and ranges began to be manufactured again. That the range manufacturing began again when the lease was entered into that other reasons for the entering into the lease and the taking over by Pioneer were tax savings, OPA concessions and lower costs of production.

Respondents except to lines 23 to 30 of said report and move that the same be deleted and the following be inserted in its place instead: that the

O'Keefe & Merritt Co. wanted to have the gas ranges manufactured and know that it was necessary to maintain for its former employees all of the privileges that they held before the transfer, otherwise the employees would not have continued to work, that if the company had wanted to take an anti-CIO attitude that would merely cut out these benefits by making the transfer to the new company, that this is exactly what the CIO said the purpose of the transfer was, i.e., to cut wages; that the company also paid Christmas bonus despite claim of CIO that the company was trying to transfer to cut employee benefits.

Respondents except to lines 44 to 50 on page 15 and lines 1 and 2 on page 16 and move that said Report be deleted and the following inserted on the basis of the foregoing facts, the undersigned concludes that the employees did not receive contributions from both companies but merely received their wages and same working conditions from the new company, that the payment of back pay was to induce these employees to keep working and to compensate them for the loss of pay they incurred by reason of the CIO's refusal to accept the pay increase offered on the first of January of 1946, which pay rate was approximately 20% higher than any other stove manufacturer on the West Coast and more than similar work in CIO shops.

Respondents except to lines 4 to 34 on page 16 and move that they be deleted and the following be inserted:

That the corporation did not assist either union but stated that "both Unions were probably bad," that the Pioneer Electric Company and the O'Keefe & Merritt Company are separate legal entities, one of whom manufactures an article and the other after paying for it, sells, delivers, installs and services the article. That the CIO had ample prior knowledge of the proposed transfer that it was a matter of common knowledge for years but that it was specifically brought to the attention of the CIO in a public speech in 1945, that despite this notice, no demand was made on the Pioneer for bargaining rights. That the CIO refused an election even after Pioneer agreed to consent to an election.

Respondents except to the conclusions in their entirety set forth on lines 1 to 50 on page 17 and move that the conclusion reached show that any group of employees who cared to listen had a legal right to listen to negotiations which were being made in their behalf, the same as any principal would have the right to observe the actions of its agents. That the respondent O'Keefe & Merritt Company bargained with the CIO in good faith and that the CIO did not request the Pioneer to bargain at all. That the O'Keefe & Merritt Company leased its facilities to the Pioneer Electric Company for the reasons herein before enumerated, namely, tax savings, OPA concessions, lower operating costs, prior agreement entered into with Mr. Durant at least two years before any CIO activities.

Respondents move that the following be added to line 9 on page 18 of said report:

That said statement was made to the employees of O'Keefe & Merritt and not to employees of Pioneer Electric Company. That the agreement with the Pioneer Electric Company subsequently entered into was entered into when conditions were entirely different, i.e., that the vast majority of Pioneer's Employees were in the A. F. of L.

Respondents move that lines 10 to 20 of page 18 of said report be deleted and the following be inserted:

that the intent to transfer the manufacture of gas ranges as soon as permitted was to be done by Pioneer Electric Company and had been in contemplation for two years prior to any CIO activities.

Respondents move that the following be added to line 35, page 18 of said report; no more proof was made in view of the fact that despite prior knowledge no demand was made by the CIO to bargain for the employees of Pioneer.

Respondents move that the following be added to line 41 on page 18, the evidence shows no demand was made by the CIO on Pioneer despite prior knowledge of the transfer and that the Pioneer Electric Company has offered to submit to an election or check off.

VIII.

Respondents except to the entire conclusion set

forth in said report beginning on page 19 at line 5, and to the remedies set forth on page 21 at line 11 and to the conclusions of law set forth on page 22 at line 9 and to the recommendations beginning on page 22 at line 45 and continuing to the end of said report and in their place and stead move the following be inserted:

That the Pioneer Electric Company is a separate legal entity that no demand has been made for bargaining rights at Pioneer and until an election is requested and won by CIO, that the Pioneer Electric Company continue its contract with the various A. F. of L. locals in full force and effect. That with respect to the O'Keefe & Merritt Company, this respondent has bargained with the CIO in good faith and has offered to continue to do so, that the complaint of the CIO union should be dismissed without prejudice.

Respectfully submitted,

/s/ CECIL W. COLLINS,

Attorney for Respondents.

[Title of Board and Cause.]

REQUEST FOR PERMISSION TO ARGUE
ORALLY BEFORE THE BOARD

To the National Labor Relations Board, Washington, D. C.:

The O'Keefe & Merritt Manufacturing Company, and Pioneer Electric Company, respondents, hereby request permission to argue orally before the Board their exceptions to the Intermediate Report filed by the Trial Examiner in the above entitled matter which said Intermediate Report is dated May 31, 1946, and also request permission to argue orally the matter of the approval of such report and the order of the Board to be made in this matter.

Dated in Los Angeles, California, this 8th day of June, 1946.

/s/ CECIL W. COLLINS,
Attorney for Respondents.

[Exceptions to Intermediate Report set forth
above, pages 122 to 131.]

[Affidavit of service by mail attached.]

[Title of Board and Cause.]

EXCEPTIONS OF STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 374, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, TO THE INTERMEDIATE REPORT AND TO THE RULINGS OF THE TRIAL EXAMINER

Come now Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, hereinafter called the Stove Mounters; International Moulders and Foundry Workers Union of North America, Local No. 374, affiliated with the American Federation of Labor, hereinafter called the Moulders; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, hereinafter called the Carpenters, and except to the Intermediate Report dated May 31, 1946, of Trial Examiner Henry J. Kent, Esq., on

file herein, to the following mentioned portions of the record, and to the following rulings of the Trial Examiner upon motions and objections as follows:

I.

The Trial Examiner committed prejudicial error in denying the motion of the Stove Mounters, the Moulders, and the Carpenters, for a continuance of the hearing before said Trial Examiner of at least thirty days, made on the ground that they had not had adequate notice of the proceedings, nor adequate time to prepare for the said hearing, and that a denial to them of adequate notice and adequate time to prepare constituted a denial of due process of law and an unwarrantable interference with the obligations of their contract involved in this proceeding.

II.

That the Trial Examiner committed prejudicial error on proceeding with the hearing of this matter when none of the above named Labor Organizations had been given adequate notice of these proceedings, or adequate time within which to prepare for said hearing.

III.

That the Trial Examiner committed prejudicial error in assuming jurisdiction to avoid a contract because of a consent election when none of the parties to the said contract were parties to the proceeding in which the consent was held, or signed the agreement for the said consent election.

IV.

The findings of fact by the Trial Examiner are not supported by the evidence.

V.

The conclusions of the Trial Examiner are not supported by the evidence.

VI.

The conclusions of the Trial Examiner are not supported by the findings of fact.

VII.

The recommendations of the Trial Examiner are without and in excess of the jurisdiction of the Trial Examiner and of the National Labor Relations Board.

VIII.

The recommendations of the Trial Examiner are not warranted by the law, or the evidence.

IX.

The Trial Examiner committed prejudicial error in basing his findings, his conclusions, and his recommendations, in part, upon a so-called consent election held on November 20, 1945, upon an agreement signed by the CIO and purported to have been signed by one H. B. McMurry, a representative of the IAM purportedly on behalf of the Los Angeles Metal Trades Council, A. F. of L., when in truth and in fact the IAM is not an affiliate of the A. F. of L. the record does not show that either the said McMurry; or the IAM, had authority to sign said consent agreement on behalf of the said Metal

Trades Council, and the record does not show that the said Metal Trades Council had authority to act for or on behalf of any of the three above named Labor Organizations, on behalf of which these exceptions are made.

X.

The evidence does not support the finding of the Trial Examiner that the respondent corporation and the respondent partnership are engaged jointly in conducting a single business enterprise.

XI.

The evidence is insufficient to support the finding of the Trial Examiner that the partnership respondent rendered material assistance to the craft unions by joining in any scheme to divide up the operation of the corporation respondent's business in order to circumvent self-organization of the employees.

XII.

The evidence is insufficient to support the finding of the Trial Examiner that the partnership respondent proceeded to negotiate a collective bargaining agreement covering a group of employees, despite prior knowledge that they had previously designated the CIO as their representative.

XIII.

The evidence is insufficient to support the finding of the Trial Examiner that any of the employees of the partnership respondent ever designated the CIO as their bargaining representative as such employees.

XIV.

The evidence is insufficient to support the finding of the Trial Examiner "since the certification, as noted above, had been made on November 28, 1945, it certainly continued in full force and effect until January 31, 1946, when the union shop contract was signed with the craft unions." This finding overlooks the fact that the certification was for the corporation and that the contract was signed by the partnership.

XV.

The evidence is insufficient to support the findings of the Trial Examiner that the transfer to the partnership respondent of part of the plant operations of the corporation respondent was "a scheme rigged with the purpose and intent of setting aside the certification of a collective bargaining representative selected as the result of a self-organization by employees."

XVI.

Neither the law, nor the evidence, are sufficient to support the following statement in the Intermediate Report of the Trial Examiner, which statement is part finding and part conclusion:

"It would be implausible to find that the transfer of part of his plant operations by an employer subject to restraint under the act relieved transferees with knowledge of his burdens."

XVII.

The evidence is insufficient to support the finding of the Trial Examiner that the execution by the

partnership of the collective bargaining contract with the craft unions was an unfair labor practice or constituted a refusal on the part of the corporation respondent to bargain with the CIO.

XVIII.

The evidence is insufficient to support the finding of the Trial Examiner that "the fifteen partnership employees of necessity have been absorbed in production and maintenance work now being jointly conducted in the plant by both of the respondents. Thus, the fifteen are no longer a separate and identifiable group and properly form a part of the production and maintenance unit which has been found to be appropriate."

XIX.

The evidence does not support the finding of the Trial Examiner that the demand upon the corporation respondent to bargain collectively with the C.I.O. "is deemed for the purposes of this proceeding to constitute a continuing demand on the corporation which is conducting the same business in the same plant with the same personnel as the 'Pioneer Electric Company.' "

XX.

The evidence is insufficient to support the finding of the Trial Examiner that "the scheme of transferring operations and personnel was motivated by a determination to avoid bargaining with the CIO."

XXI.

The evidence is insufficient to support the finding of the Trial Examiner that "on January 3, 1946,

and at all times material thereafter, the respondents have failed and refused to bargain collectively with the duly designated majority representative of their employees in an appropriate union."

XXII.

The evidence is insufficient to support the findings of the Trial Examiner that "since the Los Angeles Metal Trades Council, A. F. of L., was named on the ballot to protect and conserve the interest of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the Painters at the time were duly protected."

XXIII.

Neither the evidence, nor the law, are sufficient to support the following conclusion of the Trial Examiner:

"The contract was the culmination of a design on the part of the respondents to select the A. F. of L. as the exclusive representative of their employees as a means of circumventing its obligation to bargain collectively with the CIO as the majority representative of the employees in an appropriate unit. In its persistent efforts to thwart the self-organization of its employees, the corporation respondent after its failure to accomplish the defeat of the CIO at the election enlisted the aid of the partnership to join with it in further attempts to induce the employees to select the A. F. of L. as their exclusive representative. Clearly, in view

of the background of past unfair labor practices, as found above, the announcement made at the January 3, 1946, bargaining conference can be considered only as an effort to destroy the CIO and to bring home to the minds of the employees that they would soon be given another opportunity to select the A. F. of L. as their bargaining agent. Strong support for this last conclusion is evidenced by the unusual conduct of the partnership in proceeding to recognize the craft unions as bargaining representative of some 300 workers not yet on its payroll, concerning whom no evidence of majority representation had been submitted by the craft unions, and who already had selected the CIO to represent them."

XXIV.

Neither the law, nor the evidence, are sufficient to support the following conclusion of the Trial Examiner:

"Assuming that the craft unions could have proved a majority at the time the contract was entered into, such majority must be deemed vitiated by the interference of the respondents in connection with the solicitation of such membership. At no time material did the craft unions represent an uncoerced majority of the employees in the plant. The contract was made with labor organizations which were assisted by unfair labor practices."

XXV.

Neither the law, nor the evidence, are sufficient to support the following conclusion of the Trial Examiner:

“Accordingly the undersigned finds that by persuading and inducing their employees to join the craft unions, the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.”

XXVI.

Neither the evidence, nor the law, are sufficient to support the following statement in the Intermediate Report of the Trial Examiner, which statement is part finding and part conclusion:

“The respondents illegal conduct discloses a purpose to defeat self-organization among their employees motivated primarily by fear of an A. F. of L. boycott. For example, shortly after the election at the plant at which time the respondents learned that the CIO had been designated the majority representative of the production and maintenance employees, it was sought to coerce them in the exercise of the rights guaranteed under the Act by warning them, in effect, that unless they withdrew from affiliation with the CIO and affiliated with the A. F. of L. their economic welfare would be jeopardized. Thereafter, as a result of the scheme or plan adopted by the respondents which culminated in the transfer of the manu-

facturing operations in the plant from the corporation respondent to the partnership respondent, the respondents succeeded in inducing many of their employees to shift their union affiliations, thus circumventing the purposes of the Act. That the conduct of the respondents was motivated by fear of an A. F. of L. boycott is no justification for a violation of the Act.³⁹ Since the respondents' conduct in these respects interfered with, restrained, and coerced their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, this conduct violated Section 8 (1) of the Act quite apart from the respondents refusal to bargain with the CIO."

XXVII.

Neither the evidence, nor the law, are sufficient to support the following statement of the Trial Examiner in his Intermediate Report, which statement is part finding and part conclusion:

"In connection with the procedures followed in carrying out the scheme to defeat self-organization among the employees, it is apparent that the membership of the craft unions involved herein was procured with the assistance of the respondents' unfair labor practices. Consequently, the craft unions' union-shop contract

with the partnership is void and of no effect. The undersigned will therefore recommend that the respondents give no effect to it."

The following conclusion of law is not supported either by the law, or the evidence:

"1. O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, a co-partnership doing business as Pioneer Electric Company, are jointly employers of the employees here involved within the meaning of Section 2 (2) of the Act."

The following conclusion of law is not supported either by the law, or the evidence:

"3. By refusing on January 3, 1946, and at all times thereafter to bargain with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the certified exclusive representative of its employees in the unit heretofore found to be appropriate, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act."

The following conclusion of law is not supported either by the law, or the evidence:

"4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging

in unfair labor practices within the meaning of Section 8 (1) of the Act.”

The following conclusion of law is not supported either by the law, or the evidence:

“5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.”

XXVIII.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“(b) Recognizing the A. F. of L. labor organizations named in the preceding paragraph 1 (a) of these Recommendations, or any of them, as the exclusive representative of its employees for the purposes of collective bargaining unless and until said organizations, or any of them shall be certified by the National Labor Relations Board as the exclusive representative of such employees.”

XXIX.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“(c) Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the said labor organizations named in Section 1 (a) of these Recommendations, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them.”

XXX.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents within the appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment.”

XXXI.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“(a) Withdraw and withhold all recognition from the Stove Mounters International Union

of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representative of its employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representative of such employees."

XXXII.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"It is further recommended that unless on or before ten (10) days from the date of service of this Intermediate Report, respondents notify said Regional Director in writing that they will comply with the foregoing recom-

mendations, the National Labor Relations Board issue an order requiring respondents to take the action aforesaid."

Respectfully submitted,

/s/ ARTHUR GARRETT,

Attorney for the Labor Organizations above mentioned.

[Affidavit of service by mail attaced.]

[Endorsed]: Received June 18, 1946.

National Labor Relations Board
Collect

June 14, 1946

Arthur Garrett, Esquire
756 Broadway
Los Angeles, California

Re: O'Keefe and Merritt Manufacturing Company & Pioneer Electric Company, 21-C-2689, time for filing exceptions and briefs extended to June 21.

NATIONAL LABOR RELATIONS
BOARD.

jel:w

National Labor Relations Board

June 14, 1946

Cecil W. Collins, Esquire
3700 East Olympic Boulevard
Los Angeles, California

Katz, Gallagher & Margolis
Att: Milton S. Tyre, Esquire
111 West 7th Street
Los Angeles, California

National Labor Relations Board
Los Angeles, California

Re: O'Keefe and Merritt Manufacturing Company & Pioneer Electric Company, 21-C-2689, time for filing exceptions and briefs extended to June 21.

NATIONAL LABOR RELATIONS
BOARD.

jel:w

[Title of Board and Cause.]

EXCEPTIONS OF BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER-
HANGERS OF AMERICA, LOCAL 792, AF-
FILIATED WITH THE AMERICAN FED-
ERATION OF LABOR, TO THE INTER-
MEDIATE REPORT AND TO THE RUL-
INGS OF THE TRIAL EXAMINER

To the Chairman and Members of the National
Labor Relations Board:

Comes now Brotherhood of Painters, Decorators

and Paperhangers of America, Local 792, affiliated with the American Federation of Labor, hereinafter called the "Painters," and excepts to the Intermediate Report dated May 31, 1946, of Trial Examiner Henry J. Kent, Esquire, on file herein, to the portions of the record and to the rulings of the Trial Examiner upon motions and objections as follows:

I.

That the Trial Examiner erred prejudicially in refusing to grant the Painters herein adequate time within which to prepare for said hearing, particularly since the Painters were brought into the matter subsequently and did not have adequate notice of the proceedings.

II.

The Trial Examiner committed prejudicial error in denying the motions made in behalf of Painters Local 792 to strike the testimony in the presentation of the Board's case wherein any such testimony attempted to affect or bind Painters Local 792, and denying the motions to dismiss Painters Local 792 as a party to the above proceedings, all of which motions were continuously made and blanket obligations were reserved by the Trial Examiner in behalf of said Painters Local 792. Such motions were based upon the facts that Painters Local 792 was not a proper party to the proceedings, had entered into a collective bargaining agreement with the partnership respondent in behalf of the four (4) painters who were members of Painters Local 792 at the time of said contract, and that Painters

Local 792 had no notice of, did not participate in, nor authorize anyone to participate in or represent them in the alleged consent election.

III.

That the Trial Examiner erred prejudicially and was without jurisdiction in attempting to void a contract because of a consent election when the parties to the contract were not parties to the proceeding in which the consent election was held and more importantly that the Painters herein were not parties in the proceedings in which the consent election was held, did not sign the agreement for said consent election, and did not authorize any individual, firm or group to sign said agreement for said consent election. There is a complete failure of the entire record to establish that the Painters herein participated in the consent election, authorized anyone to represent them in said election, had notice of such consent election, and as a result the Trial Examiner flagrantly erred in attempting to set aside a collective bargaining agreement between the Painters and the Pioneer Electric Company, a co-partnership.

IV.

The findings of fact by the Trial Examiner in respect to the Painters herein are not supported by any evidence.

V.

The Conclusions of the Trial Examiner in respect to the Painters herein were not supported by the evidence.

VI.

The conclusions of the Trial Examiner in respect to the Painters herein are not supported by the findings of fact.

VII.

The recommendations of the Trial Examiner in respect to the Painters herein are not only without and beyond the jurisdiction of the Trial Examiner and of the National Labor Relations Board, but are completely violative of the United States Constitution in their attempt to impair the obligation of contracts and to deny the members of Painters Local 792 collective bargaining representation without due process.

VIII.

The recommendations of the Trial Examiner in respect to the Painters herein are completely unwarranted by the law and by the evidence.

IX.

The Trial Examiner committed flagrant and prejudicial error in attempting to base his findings, his conclusions and his recommendations, in the greatest part, upon the alleged consent election held on November 20, 1945, and upon an agreement purportedly signed by the C.I.O. and by a certain H. B. McMurry, a representative of the I.A.M. and purportedly in behalf of the Los Angeles Metal Trades Council, A. F. of L., when in fact and unquestionably, and of which fact the Trial Examiner is fully informed, the I.A.M. is not an affiliate of the A. F. of L. and most importantly, in respect to the Paint-

ers herein, there is no evidence (in fact it is admitted by all the parties as pointed out during the proceedings) that at no time did anyone, including the said H. B. McMurry or I.A.M. or C.I.O. or the companies, have any authority whatsoever to enter into any consent election which could validly bind and affect Painters Local 792 and that in respect to Painters Local 792 said consent election is void and without any force and effect and the Trial Examiner's attempt to breathe validity therein is decidedly violative of the spirit and the letter of the National Labor Relations Act.

X.

While the Painters herein believe that the question of separate identity between the corporation respondent and the co-partnership respondent, is a legal matter to be resolved by the National Labor Relations Board and perhaps by a hearing of the court, a reading of the evidence clearly sets forth that there is no basis for the finding of the Trial Examiner that the corporation respondent and co-partnership respondent are engaged jointly in conducting a single business enterprise.

XI.

There is no evidence to support the finding of the Trial Examiner that the co-partnership respondent rendered material or any aid whatsoever to the crafts union of the Painters Local 792 by joining in any plan to divide up corporation respondent's business in order to avoid the self-organization of the employees.

XII.

In respect to the Painters, there is no evidence to support the Trial Examiner's finding that the partnership respondent proceeded to negotiate a collective bargaining agreement with the Painters (by inference that would be the conclusion of the Trial Examiner in attempting to impinge authority on the I.A.M. as representing the Painters, which is contrary to all the evidence), despite knowledge that such employees had previously designated the C.I.O. or their representative, when, as a matter of fact, the four Painters who participated designated the A. F. of L. Painters Local 792, and as a matter of fact Local 792 had no knowledge of the consent election, did not participate therein, nor authorize anyone to represent them.

XIII.

There is no evidence to support the finding of the Trial Examiner that any of the Painters of the partnership respondent ever designated the C.I.O. as their bargaining representative, but as a matter of fact the evidence is clear (Durant's testimony) that the Painters Local 792 had authorization cards designating said local as collective bargaining representative from all the four (4) painters involved.

XIV.

In respect to the Painters herein, there is no evidence to support the finding of the Trial Examiner which attempts to continue the full force and effect of the certification as applicable against the partnership since as a matter of fact the certifica-

tion was for the corporation and in said consent election there was no participation of the Painters herein or authorization given to anyone to represent said Painters and the collective bargaining contract between the partnership respondent and Painters Local 792 was signed by the partnership for and in behalf of the Painters who had designated Painters Local 792.

XV.

There is no evidence to support the finding of the Trial Examiner that the execution by the partnership of the collective bargaining contract with the Painters was an unfair labor practice or could be deemed to constitute a refusal on the part of the corporation respondent to bargain with the C.I.O.

XVI.

There is no evidence to support the finding of the Trial Examiner that "on January 3, 1946, and at all times material thereafter, the respondents have failed and refused to bargain collectively with the duly designated majority representative of their employees in an appropriate unit," when in fact the record discloses no evidence that C.I.O., during the times involved, represented any of the Painters and at no time during the proceeding was affirmative evidence introduced to establish that C.I.O. union represented any of the painters, and conversely evidence was introduced that at the time of the execution of the collective bargaining agreement between the partnership respondent and Painters Local 792, all of the Painters were members of Painters Local 792, A. F. of L.

XVII.

There is no evidence, and in this respect there is what might be considered a negligent avoidance of responsible judgment, that "since the Los Angeles Metal Trade Council, A. F. of L. was named on the ballot to protect and conserve the interests of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the painters at the time were duly protected." Such a finding confounds not only law but common sense, for under the same token, every A. F. of L. union would be estopped from any further participation because at the same time a consent election was held between a then interested A. F. of L. group, admittedly not representing all of the A. F. of L. unions involved. The Trial Examiner knew and admitted to counsel that the Painters Local 792 was not then, nor is now, a member of the A. F. of L. Metal Trades Council. Accordingly, such finding must be reversed.

XVIII.

None of the findings, and no law, support the conclusion of the Trial Examiner:

"Upon all the foregoing, and upon the basis of the entire record, the undersigned finds that the respondent, by its entire course of conduct, including the sponsoring of the A. F. of L. activities of Spallino and Levaseo among its employees on company time and property, the questioning of Spallino and Levaseo, in the presence of Collins, by A. F. of L. representa-

tives regarding the union affiliations of the employees, O'Keefe's warning to the employees that their economic security depended upon the success of the A. F. of L. in the election and in permitting the holding of a pro-A. F. of L. meeting in the plant just prior to the opening of the polls, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

XIX.

No evidence, nor law, supports the conclusion of the Trial Examiner:

"As noted above, the Regional Director on November 28, 1945, issued his Consent Determination of Representatives, in the earlier representation proceeding²³ finding that, all production and maintenance employees employed at the Los Angeles plant of the company, excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern maker helpers other than those working in sheet metal experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, pursuant to the terms of the consent election agreement previously entered

into on November 14, 1945. No objections were raised to the conduct of the ballot or to the determination of the Regional Director."

No evidence, nor law, supports such conclusion particularly in respect to the Painters herein since no unit could be carved involving the Painter without either participation by the Painters or authority given by them to some group or individual to represent them and there is no testimony of either such authority.

XX.

No evidence, or law, supports the conclusion of the Trial Examiner as to the appropriate unit and the union's majority representation therein, as set forth in Page 12 of his Intermediate Report. The Trial Examiner prejudicially erred in such conclusion, in failing to find specifically that all of the Painters were excluded from such unit since Painters Local 792 did not participate in such consent election or authorize anyone to represent them.

XXI.

No law or evidence support the following conclusion of the Trial Examiner:

"Assuming that the craft unions could have proved a majority at the time the contract was entered into, such majority must be deemed vitiated by the interference of the respondents in connection with the solicitation of such membership. At no time material did the craft unions represent an uncoerced majority of the employees in the plant. The contract was made

with labor organizations which were assisted by unfair labor practices.”

XXII.

Neither the law nor the evidence support at all the conclusion of the Trial Examiner that the closed shop contract between Painters Local 792 and the co-partnership respondent is invalid, as set forth in conclusion in the Intermediate Report:

“On some occasion between November 27, 1945 and February 1, 1946, the respective dates of O’Keefe’s second and third speeches to the employees, Collins delivered a similar speech to them at a meeting held at the plant during business hours. Collins, on this occasion, stated in substance: when Mr. O’Keefe outlined the company’s position to them a short time ago, he explained to them that while he was not trying to sell either union, he felt that the A. F. of L. was the better choice, because a larger market for the sale of products would be opened up if they were working under an A. F. of L. agreement; that he (Collins) had been bargaining in good faith with the CIO and offered to pay the highest rates paid in the stove industry in the area; ³³and that although the company was willing to do everything possible to maintain peaceful labor conditions at the plant, none of its employees would be forced into joining any union.³⁴

“The partnership respondent was first brought into the picture on January 3, 1946.

The bargaining conference held on that day between the corporation respondent and the CIO, was selected as a sounding board to announce to a group of employees invited to attend by the corporation that plans were under way to transfer all manufacturing operations to the partnership, and that when this deal was consummated there would be few employees left on the payroll for the CIO to bargain for. Clearly in view of the background of past unfair labor practices, as found above, this was but another request to the employees to join the A. F. of L.

“Shortly thereafter, in January 1946, bargaining conferences between the partnership company and the craft union commenced. Wilbur Durant, the managing partner of the partnership, testified that he delegated authority to Collins,³⁶ sometime during January 1946, to negotiate an agreement between the partnership and the craft unions covering all production employees at the plant;³⁶ that, at the time, he (Durant) knew that the CIO previously had been certified as the majority representative of the corporation employees; that following such bargaining conferences between Collins and the craft union representatives, he and Collins met with the craft union representatives at Durant's office on January 31, 1946³⁷ and in about 5 minutes the union-shop contract was signed by all parties; and that prior to signing the contract no proof had been required

of the Unions to show that they, in fact, represented a majority of the employees involved, because he had been assured by some of the older employees of the corporation that the A. F. of L. had signed up a majority and accepted the statements as true."

XXIII.

There is no evidence of any kind or description, nor does the law in any respect support the conclusion of the Trial Examiner, as follows:

"The craft unions offered no proof respecting their designations as bargaining agents at the hearing, nor does the record contain any evidence regarding the bargaining negotiations between the partnership company and the unions, parties to the contract other than that appearing in Durant's above testimony.

"In respect to this issue, the Painters interposed a special defense, namely, that because the records fail to show that it specifically participated as a party in the November 20, 1945, consent election, it was not bound by the designation of the CIO as a result of those proceedings, and that consequently any evidence herein is not binding on it. The undersigned finds no merit in this contention. The record shows that the names of four employees classified as painters appeared on the eligible list of voters used at the consent election. that these four employees voted and the votes were not challenged, and that since the Los Angeles

Metal Trade Council, A. F. of L. was named on the ballot to protect and conserve the interests of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the painters at the time were duly protected."

XXIV.

That the recommendation of the Trial Examiner, as set forth below, is not supported either by law or by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"Urging, persuading, warning or coercing its employees to join the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., and from encouraging membership in any of the above named organizations, discouraging membership in United Steelworkers of America, CIO, or any other labor organization of its employees."

XXV.

That the recommendation of the Trial Examiner, as set forth below, is not supported either by law or by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“Recognizing the A. F. of L. labor organizations named in the preceding paragraph 1 (a) of these Recommendations, or any of them, as the exclusive representative of its employees for the purposes of collective bargaining unless and until said organizations, or any of them shall be certified by the National Labor Relations Board as the exclusive representative of such employees.”

XXVI.

That the recommendation of the Trial Examiner, as set forth below, is not supported either by law or by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the said labor organizations named in Section 1 (a) of those Recommendations, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them.”

XXVII.

That the recommendations of the Trial Examiner, as set forth below, is not supported either by law or

by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“Withdraw and withhold all recognition from the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representative of its employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representative of such employees.”

Respectfully submitted,

/s/ ALEXANDER H. SCHULLMAN,
Attorney for the Labor Organization above mentioned.

To the National Labor Relations Board:

Due to Counsel's absence from the city at the time of the receipt of Intermediate Report, Counsel was unable to request permission to argue orally before the Board, and at this time, with the gracious consent of the National Labor Relations Board, and of the parties herein, in behalf of Painters Local 792, Counsel requests permission to appear and argue the matter orally before said National Labor Relations Board.

Respectfully,

/s/ ALEXANDER H. SCHULLMAN,
Attorney for the Labor Or-
ganization above mentioned.

Dated: June 14, 1946.

[Affidavit of service by mail attached.]

[Endorsed]: Received June 20, 1946.

[Title of Board and Cause].

BRIEF IN SUPPORT OF EXCEPTIONS OF
UNITED STEELWORKERS OF AMER-
ICA, STOVE DIVISION, LOCAL 1981, CIO
TO PORTION OF INTERMEDIATE RE-
PORT AND TO RULINGS UPON CER-
TAIN OBJECTIONS.

We do not feel that it is necessary to divide this brief into those portions which support each of the three exceptions filed concurrently herewith by the Steelworkers. The three exceptions actually deal

with the same point. Paragraph 5-e of the Second Amended Complaint alleges that the respondent companies interfered with, restrained and coerced their employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively with the representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by "attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the union, to surrender the union's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the union." It is the Trial Examiner's finding that the proof does not sustain this allegation to which the exception has been lodged by the Steelworkers. The Trial Examiner also overruled objections by the Steelworkers' counsel and by the Board's counsel to hearsay conversations intended to rebut the evidence concerning proof of this allegation. To this ruling also the Steelworkers have lodged an exception. This brief shall deal with those exceptions.

The Trial Examiner in his finding on this point at pages 19- fails completely to set forth the real evidence introduced in support of the allegation of bribery. There were two conversations between Collins and the union representatives at which the offer of bribe was made. Neither of these meetings was called at the request of the union representa-

tives. It is significant that the meetings were held at the express request of Mr. Collins, counsel for the company.

It is not true, as implied by the Trial Examiner's Intermediate Report, that Collins had conditioned his offer of \$1000 if the union would consent to the holding of another consent election. The record will clearly show that Despol was made an outright offer without any conditions. This was on the first meeting on January 25, 1946. It was only when Conway, the other union representative, asked Mr. Collins how the union could hope to keep face if it withdrew from the case that Mr. Collins then said that the union could file Charges with the Labor Board and let the case run itself out in that manner. In this way the union could not then be said to have sold out to the company.

The Trial Examiner says that the offer was to give \$1000 from Collins' legal fee. The record certainly does not clearly indicate that this was what was stated by Mr. Collins. However, even if this were so, this does not in any way detract from the fact that the offer of bribe was made. Whether the money to support that bribe would come from legal fees or from any other source is immaterial. The mere fact that money is to be given to the union in order that the union would withdraw its activity is sufficient to support a cease and desist order.

It is also important to note that the offer was renewed and raised at the second meeting between Collins, Despol and Conway. Again we must remember that this meeting was called at the request

of Mr. Collins. If the bribery was not intended as a bribe, why then would the offer have been raised from \$1000 to \$1500? Furthermore, why the meeting outside regular working hours, that is, at a cocktail bar, unless something was being said or done which was not usually done in the ordinary run of negotiations?

Not only was the original \$1000 offer made on January 25, 1946; not only was this offer renewed and raised to \$1500 on February 1, 1946; but the same offer was again renewed on the telephone when Mr. Collins telephoned to Mr. Despol on February 4, 1946.

The Trial Examiner apparently places great weight in ignoring these repeated offers of a bribe on the fact that Despol is supposed to have had friendly relations with Mr. Collins over a period of several years, and Despol and Collins had "Frequently gone into a bar together to indulge in alcoholic stimulants." The fact that Despol and Collins are on speaking relationships certainly does not support a finding that no offer of a bribe was made. Obviously, it is more likely that a bribe could be offered by Mr. Collins to Mr. Despol since they were on friendly terms. It is highly unlikely that Collins would offer a bribe to a stranger under these circumstances. That the bribe was offered by Collins to Despol and Conway during the course of drinking a cocktail also has nothing to do with the fact of the offer itself. Obviously the surroundings of a cocktail bar are much more conducive to off-the-cuff

dealings than the formality and rigidity of a lawyer's office.

As a matter of fact Despol and Collins had not been quite so friendly as the Trial Examiner would indicate by his Intermediate Report. Despol had known Collins for a period of several years, but it is not true that he had during that time on a number of occasions gone with Collins to a bar to "indulge in alcoholic stimulants."

The Trial Examiner would impeach Mr. Despol's testimony because of a slight inconsistency between his testimony and that of several A. F. L. members called by the company as its witnesses over certain conversations, having nothing to do with the bribe, which took place in Mr. Collins' office during the negotiations between the respondent companies and the Steelworkers. In the first place, these witnesses obviously are biased and prejudiced. Not only were they called by the company as company witnesses, but furthermore they are members of that labor organization whose contracts are sought to be set aside in this case by the CIO.

It is of the utmost significance that Mr. Collins himself feels that Mr. Despol's character is of the highest type. Mr. Collins himself admitted on one occasion during the hearing that it would not be necessary to excuse Mr. Despol from the hearing room during the course of an off-the-record discussion between counsel and the Trial Examiner since, as Mr. Collins himself stated on the record, Mr. Despol would unquestionably testify to the truth anyway. When the company's own counsel feels this way

about the testimony of Mr. Despol, certainly it does not lie in the mouth of the Trial Examiner to disregard the testimony of Mr. Despol.

Incidentally, the testimony of Despol and Conway concerning the conversations with Collins on January 25, February 1 and February 4, all in 1946, is totally un rebutted. Furthermore, the respondent companies stipulated with the union and with the Board that four other witnesses, if called to testify, would testify in the same manner and to the same extent that Despol and Conway testified concerning the conversation of February 1, 1946 at which time the \$1000 offer of a bribe was raised to \$1500. None of this testimony was rebutted either directly or even indirectly.

The one person who was in a position to offer any evidence contradictory of the union's evidence was Cecil Collins himself. How can the Trial Examiner or the Board disregard the fact that Cecil Collins, the man who is supposed to have offered the bribe, did not take the witness stand and did not testify at this hearing. Mr. Collins was present at all times during the hearing as counsel for the respondent companies. It would have been convenient for him to testify. He would have had to do nothing more than take the stand and testify as to actually what took place if he really felt that anything different than what Despol and Conway testified to did take place. As a matter of fact Mr. Collins did not even seek a stipulation from counsel at the hearing that if Mr. Collins would take the stand he would testify in a certain manner. Obviously this offer of a stipu-

lation could not be made, nor could Mr. Collins take the stand, for in truth and in fact, what Mr. Conway and Mr. Despol testified to was the actual truth.

The Trial Examiner says that "It is inconceivable to the undersigned that if Despol entertained a sincere conviction that Collins had offered a bribe to sell out the CIO, that Despol would continue his friendly relations with Collins to the extent of still going into cocktail bars with Collins." Can there be any question at all concerning Despol's sincere conviction on this point? After the offer had been made the first time, Despol apparently figured that it might have been made in jest or under circumstances not indicating that Mr. Collins was sincere. Therefore, when Collins again requested a meeting at the cocktail bar, Despol arranged to have Mr. Conway there with him, and also arrange to have four other witnesses present. If Mr. Despol did not entertain a "sincere conviction" that Collins was offering a bribe, of what need, then, for Despol to go to all the trouble of arranging to have witnesses present?

The fact that Despol continued to go into cocktail bars with Collins after the original offer was made certainly does not indicate that he was not sincerely convinced that the bribe was being made. On the contrary, it supports the view that Despol was sincere in that conviction. After the offer was made the first time, naturally Despol was willing to go to the cocktail bar the second time in order to have that offer renewed.

We believe that the record will show that Despol went into a cocktail bar only once with Mr. Collins during the course of the hearing. Again if Despol expected an offer of a bribe to be made during the hearing, certainly he had a right to attend such a meeting with Collins for that purpose. Had the offer of bribe been made at that time, Despol could then have returned to the witness stand and testified concerning the fourth renewed offer of the bribe.

In conclusion, it can be sincerely stated that the Trial Examiner's finding that there was no attempted offer of a bribe by Collins is totally unsupported by even a scintilla of evidence. The testimony concerning the several offers of bribe are detailed and clear. There is not one shred of evidence to rebut it. The very person who was present and who could deny the fact the bribe was made was present at the hearing throughout, and could have taken the witness stand and so testified. He did not.

Concerning the Trial Examiner's overruling of the objection to the testimony of W. J. O'Keefe concerning his conversations with Collins over Collins' conversations with Despol and Conway, certainly there can be no doubt that the Trial Examiner erred and erred prejudicially against the case of the Board and the Steelworkers. If Mr. Collins wished to put into evidence that he did not make the offer which he was supposed to have made, according to the testimony of six witnesses, then it would have been incumbent upon him to take the stand and so testify. It is obviously not only a violation of the rule against hearsay, but a violation which cannot

be permitted even in the informal proceedings conducted by the Board, to permit W. J. O'Keefe, an officer of one of the respondent companies and a stockholder in the other, to testify about what Mr. Collins had told him he had told to Mr. Despol. No one was present during this alleged conversation between W. J. O'Keefe and Collins except the two of them. On such a vital point as this, especially when the persons involved were present during the hearing, it was totally unnecessary to permit such testimony of a hearsay witness. Further, it was extremely prejudicial to the union's and Board cases.

Respectfully submitted,

KATZ, GALLAGHER &
MARGOLIS,

By /s/ MILTON S. TYRE,

Attorneys for United Steelworkers, Stove Division,
Local 1981, CIO.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 24, 1946.

[Title of Board and Cause.]

NOTICE OF HEARING

Please take notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, July 30, 1946, at 10:30 a.m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., June 27, 1946.

EDWARD M. ROCHE,
Acting Chief, Order Section.

174 *National Labor Relations Board vs.*

National Labor Relations Board

Case No. 21-C-2689

July 30, 1946, 11:35 to 1:05.

Board Members Present: Mr. Herzog, Mr. Reilly,
Mr. Houston.

ORAL ARGUMENT

Name O'Keefe and Merritt (Pioneer Electric
Company).

Appearances:

A) Of Counsel to the Board:

Review Attorney: Miss Bliefeld

B) For the Company:

Mr. Cecil W. Collins, 3700 E. Olympic Blvd., Los
Angeles, California.

C) For the Union: United Steelworkers of Amer
ica (CIO):

Mr. Frank Donner, 718 Jackson Place N. W.
Washington, D. C.

D) For the Intervenor: Stove Mounters Int'
Union of North America:

Mr. Wilson, 756 Broadway, Los Angeles, Cali
fornia.

United States of America

Before the National Labor Relations Board

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTUR

ING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILBUR G. DURANT, individually and as co-partners, doing business as PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, CIO,

and

STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL No. 374, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 94, for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS. UNITED

BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; and REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

Mr. Maurice J. Nicoson and Mr. Eugene M. Purver, for the Board. Mr. Cecil W. Collins, of Los Angeles, Calif., for the respondents. Katz, Gallagher & Margolis, by Mr. Milton S. Tyre of Los Angeles, Calif., for the CIO. Mr. Arthur Garrett and Mr. John Leo Harris, of Los Angeles, Calif., for the Stove Mounters, the Moulders, and the Carpenters. Mr. Dale O. Reed, of Los Angeles, Calif., for the IAM. Mr. John Stevenson, of Los Angeles, Calif., for the Teamsters. Mr. Alexander H. Schullman and Mr. David S. Smith, of Los Angeles, Calif., for the Painters. Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION AND ORDER

On May 31, 1946, Trial Examiner Henry J. Kent issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the respondents, the AFL, and the CIO filed exceptions to the Intermediate Report and supporting briefs. Pursuant

to notice to all parties, oral argument, requested by the respondents, was held before the Board at Washington, D. C. on July 30, 1946. All parties appeared and participated in the oral argument. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and briefs of the parties, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as hereinafter modified.

1. The respondents allege that the partnership respondent was improperly served with notice of the proceedings and that the appearance entered on the record was only for those members of the partnership respondent as to whom proper service had been made. The respondents contend that the interest of the partners in the partnership property cannot be bound unless all partners are properly served with process. Return receipts indicating service by registered mail on all members of the partnership were introduced into the record. These indicate that each member of the partnership, or his agent, signed a receipt, and Wilbur G. Durant, the manager of the partnership respondent, admitted at the hearing that he had been personally served with notice. Section 11 (4) of the Act, and Article V of the Rules and Regulations provide for the service of all complaints, orders, and other processes and papers of the Board by registered mail.

Article V of the Rules and Regulations further provides that the "verified return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same."¹

Under the provision for the liberal construction of the Rules and Regulations² and the aforementioned sections of the Rules and Regulations, it is clear that the Board is not bound by technical requirements as to service. Where, as here, a respondent is put on notice and is aware of the action and his rights and liabilities thereunder, and service has been made in accordance with the provisions of the Act, it is sufficient to bind all members of a partnership even in the absence of proof that each partner was served personally. We therefore find that all members of the partnership respondent are bound by the Decision and Order herein.

¹It is also to be noted that Section 2 of Article V of the Rules and Regulations provides:

Sec. 2. Same by parties; proof of service.—Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

²Article IX of the Rules and Regulations.

2. The respondents except to the finding of the Trial Examiner that they are engaged in conducting a single business enterprise and are therefore jointly and severally liable for the unfair labor practices found by the Trial Examiner. They contend that the lease to the partnership was entirely valid, having been made under an absolute legal right; that the partnership respondent had been in existence for some time prior to the lease and was not formed for the purpose of evading the requirement to bargain with the CIO in accordance with the Board's certification of that organization; and that the partnership respondent is not the alter ego of the corporate respondent. We find this contention also to be without merit. It is clear from the record that there is a considerable community of interest between the two respondents. All members of the partnership respondent, except one who is an employee of the corporation, are stockholders in the corporate respondent. The corporate respondent bears part of the partnership respondent's pay roll expenses, since by the terms of the lease the corporate respondent pays for the pension fund, insurance, contributions to the Five and Over Club, and bonuses for the partnership respondent's employees. Also, the corporate respondent indirectly bears all salary expenses for the partnership respondent's employees, inasmuch as under the terms of the lease the corporate respondent pays all labor costs plus $21\frac{1}{2}$ percent. While certain OPA and tax advantages have had some influence on the decision to transfer the manufacturing operations of the cor-

porate respondent to the partnership respondent, it is apparent that a major consideration was also the desire to be removed from the AFL unfair list. This could only be accomplished by signing a contract with the AFL. The employees, however, had voted for the CIO as their bargaining agent and that organization had been certified by the Board. It is true, as the dissenting opinion states, that the election was held while the respondents were reconverting to peacetime production, but the record shows that the number of persons employed by the respondents during the period in question remained relatively stable. Both at the time of the election and at the time of the transfer of employees from the corporate respondent to the partnership respondent, the total number of employees was approximately 341. Furthermore, there is no showing of change in type of the respondents' employees during the same period. Where, as here, the evidence indicates that the transfer to the partnership was motivated by two reasons, one legal and the other illegal, the burden was on the respondents to separate the two, viz., to show that the lease and transfer would in any event have taken place absent the illegal motivation.³ This the respondents have failed to do. We therefore find that the partnership respondent is liable for the unfair labor practices found herein and that the corporate respondent has violated Section 8 (5) of the Act by its refusal to

³See *N. L. R. B. v. Remington Rand, Inc.*, 94 F. 2d 872 (1st C. A. 2), cert. denied 304 U. S. 576.

bargain with the CIO. We also find that, under the circumstance set forth herein, the partnership respondent's contract with the AFL is invalid and should be set aside.

3. Exceptions have also been taken to the findings of the Trial Examiner relating to speeches made by William J. O'Keefe and Cecil Collins, and to the validity of the consent election as a result of which the CIO was certified. We have considered the record and the briefs of the parties, and we concur in the findings of the Trial Examiner.

4. We find no merit in the CIO's exceptions to the Trial Examiner's dismissal of the allegation that the respondents attempted by offers of payment of money to influence representatives of the CIO to surrender its position as the exclusive bargaining representative of the employees and to discontinue further activity on behalf of the CIO. We agree with the Trial Examiner that these allegations of the complaint should be dismissed.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, Los Angeles, California, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Urging, persuading, warning, or coercing their employees to join Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; International Moulders & Foundry Workers Union of North America, Local No. 374, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL; encouraging membership in any of the above named organizations; and discouraging membership in United Steelworkers of America, Stove Division, Local 1981, CIO or any other labor organization of their employees;

(b) Recognizing or in any manner dealing with the IAM and the AFL labor organizations named in the preceding paragraph, or any of them, as the exclusive representatives of the respondents' employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, or other conditions of employment, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees:

(c) Giving effect to the union-shop contract

dated January 2, 1946, and signed on January 31, 1946, with the IAM and the AFL labor organizations named in paragraph 1 (a) above, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;

(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of

America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL, as the exclusive representatives of their employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(b) Upon request, bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(c) Post at their plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-

first Region, shall, after being duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this order, what steps the respondent have taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondents violated the Act by attempting by offers of payment of money to influence representatives of the CIO to surrender the CIO's position as the exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO.

Signed at Washington, D. C., this 26th day of August, 1946.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

[Seal]

NATIONAL LABOR RELATIONS BOARD.

Gerard D. Reilly, dissenting in part:

While I agree with my colleagues that the closed-shop agreement signed by the partnership respondent with the A. F. of L. is invalid and that the corporate respondent refused to bargain with the CIO in accordance with the certification of that organization by the Board, I am unable to agree with that part of the remedy which orders the partnership respondent to bargain with the CIO.

During the war the corporate respondent was engaged in the production of generators and the partnership respondent was engaged in the production of parts for the generators. Both respondents had offices and manufacturing facilities in the same building. In 1944 the CIO filed a Petition for Investigation and Certification of Representatives with the Board. At the conferences with respect to this petition, the inclusion of the partnership respondent in the election was discussed. This petition was later dismissed by the Board because of the failure of the CIO to make a substantial showing of representation. In 1945 the CIO engaged in another organizational campaign, and in October 1945 it filed another Petition for Investigation and Certification of Representatives. This petition sought a unit of only the employees of the corporate respondent and did not include the employees of the partnership respondent. The election was held and certification issued during a reconversion period when the partnership respondent was finishing its wartime production orders and the corporate re-

spondent was reconverting to the manufacture of stoves. Because of this reconversion by the corporate respondent, the A. F. of L. threatened to reinvoke a secondary boycott of the corporate respondent's products which had been started in 1936 or 1937. The corporate respondent, because of the threat of the boycott, appealed to its employees to vote for the A. F. of L., but they chose the CIO instead.

In January 1946, the partnership respondent signed a closed-shop agreement with the A. F. of L. During this same month the corporate respondent transferred substantially all its employees to the partnership respondent. It is conceded that one of the reasons for the transfer was that under OPA regulations the partnership respondent could obtain high prices for its products because it was a new producer in the field.

On these facts, I feel that the change in the operations of the corporate respondent was not for the purpose of escaping the obligation to bargain with the CIO imposed by the Board's certification of that organization. Also, the CIO, in my opinion, knew the circumstances regarding the existence of the partnership respondent at the time that it filed its petition, and, nevertheless, chose not to include the employees of the partnership respondent in the unit sought. I do not, therefore, feel that the partnership respondent, which was not a party to the original representation case, should be required to bargain with the CIO without a new election among its employees, although I would direct the partner-

ship respondent to refrain from bargaining with either union unless and until it has been certified by the Board.

Signed at Washington, D. C., this 26th day of August, 1946.

GERARD D. REILLY,

Member National Labor Relations Board.

[Note: Intermediate Report of Trial Examiner is set forth at page 63.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all the employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: All production and maintenance employees at our Los Angeles plant excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and

supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

We will not recognize Stove Mounters International Union of North America, Local 125, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representatives of any of our employees for the purpose of collective bargaining, or give effect to the contracts now existing with said organizations, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of our employees.

We will not urge, persuade, warn, or coerce our employees to join the I. A. M. or any of the A. F. of L. unions above-named, and we will not discourage membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization, or encourage membership in the I.A.M. or any of the above-named A. F. of L. unions, or any other labor organization.

All our employees are free to become or remain members of United Steelworkers of America, Stove Division, Local 1981, C.I.O., or any other labor organization.

O'KEEFE & MERRITT
MANUFACTURING CO.,
Employer.

PIONEER ELECTRIC
COMPANY,
Employer.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Affidavit of service by mail and return receipts attached.]

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

O'KEEFE AND MERRITT MANUFACTUR-
ING COMPANY and L. G. MITCHELL,
W. J. O'KEEFE, MARION JENKS, LEWIS
M. BOYLE, ROBERT J. MERRITT, ROB-
ERT J. MERRITT, JR., and WILBUR G.
DURANT, individually and as co-partners,
doing business as PIONEER ELECTRIC
COMPANY,
Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Ex-
ecutive Secretary, duly authorized by Section 203.87,
Rules and Regulations of the National Labor Rela-
tions Board, Series 5, hereby certifies that the docu-
ments annexed hereto constitute a full and accurate
transcript of a proceeding had before said Board
entitled, "In the Matter of O'Keefe and Merritt
Manufacturing Company and L. G. Mitchell, W. J.
O'Keefe, Marion Jenks, Lewis M. Boyle, Robert
J. Merritt, Robert J. Merritt, Jr., and Wilbur G.
Durant, individually and as co-partners, doing busi-
ness as Pioneer Electric Company and United Steel-

workers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local No. 347, affiliated with American Federation of Labor; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local No. 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters Union Association, Local 508, affiliated with American Federation of Labor, parties to the contract," the same being known as Cases Nos. 21-R-3101 and 21-C-2689, respectively, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

Case No. 21-R-3101

(1) Petition for certification of representatives filed by United Steelworkers of America on October 23, 1945.

(2) Agreement for consent election executed November 14, 1945.

(3) Tally of ballots and certification on conduct of election issued November 20, 1945.

(4) Consent determination of representatived dated November 28, 1945.

(5) Items 1, 2, 3 and 4 are listed in the exhibit folder and included in item 7 below.

Case No. 21-C-2689

(6) Copy of order designating Henry J. Kent Trial Examiner for the National Labor Relations Board, dated March 6, 1946.

(7) Stenographic transcript of testimony held before Trial Examiner Kent on March 6, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27 and 28, 1946, together with all exhibits introduced in evidence.

(8) Copy of Trial Examiner Kent's Intermediate Report dated May 31, 1946 (annexed to item 21 hereof).

(9) Copy of order transferring case to the Board, dated May 31, 1946, together with affidavit of service.

(10) Copy of erratum issued by Trial Examiner Kent on June 4, 1946 (annexed to item 21 hereof).

(11) Copy of A. F of L.'s request for oral argument before the Board, dated June 6, 1946.

(12) Copy of Stove Mounters request for extension of time for filing brief.

(13) Copy of company's exceptions to Intermediate Report, sworn to on June 8, 1946.

(14) Copy of respondents' request for oral argument before the Board dated June 8, 1946.

(15) Copy of Stove Mounters exceptions to the Intermediate Report, sworn to on June 13, 1946.

(16) Copy of Board's telegrams dated June 14, 1946, granting all parties extension of time to file exceptions and briefs.

(17) Copy of A. F. of L.'s exceptions to the Intermediate Report sworn to on June 18, 1946.

(18) Copy of CIO's exceptions to Intermediate Report, sworn to on June 22, 1946.

(19) Copy of notice of hearing for the purpose of oral argument before the Board, dated June 27, 1946.

(20) Copy of list of appearances at oral argument held before the Board on July 30, 1946.

(21) Copy of decision and order and annexed erratum and intermediate report issued on August 26, 1946, together with affidavit of service and United States Post Office Return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 26th day of April, 1948.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary.

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

O'KEEFE AND MERRITT MANUFACTUR-
ING COMPANY, and L. G. MITCHELL,
W. J. O'KEEFE, MARION JENKS, LEWIS
M. BOYLE, ROBERT J. MERRITT, ROB-
ERT J. MERRITT, JR., and WILBUR G.
DURANT, individually and as co-partners,
doing business as PIONEER ELECTRIC
COMPANY,
Respondents.

PETITION FOR ENFORCEMENT WITH
MODIFICATIONS OF AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant
to the National Labor Relations Act, as amended
(6 Stat. 136, 29 U.S.C.A., Secs. 141, et seq. (Supp.
July, 1947)), herein called the Act, respectfully
petitions this Court for the enforcement of its order,
with the modifications recommended below in para-
graphs (5) and (6), against respondents, O'Keefe
and Merritt Manufacturing Company and L. G.
Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M.

Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, and their officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local No. 374, affiliated with American Federation of Labor; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, parties to the contract, Case No. 21-C-2689."

In support of this petition, the Board respectfully shows:

(1) Respondent O'Keefe and Merritt Manufacturing Company, a California corporation, and respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, doing business as Pioneer Electric Company, are engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court has jurisdiction of this petition by virtue of Section 10 (e) of the Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on August 26, 1946, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondents, and each of them, and their officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10 (e) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing busi-

ness as Pioneer Electric Company, Los Angeles, California, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Urging, persuading, warning, or coercing their employees to join Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; International Moulders & Foundry Workers Union of North America, Local No. 374, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL; encouraging membership in any of the above named organizations; and discouraging membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization of their employees;
- (b) Recognizing or in any manner dealing with the IAM and the AFL labor organizations named in the preceding paragraph, or any of them, as the exclusive representatives of the respondents' employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, or other

conditions of employment, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

- (c) Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the IAM and the AFL labor organizations named in paragraph 1 (a) above, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;
- (d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, time-keepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Withdraw and withhold all recognition from Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL, as the exclusive representatives of their employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;
- (b) Upon request, bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employ-

ees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

- (c) Post at their plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;
- (d) Notify the Regional Director for the Twenty-first Region in writing, with ten (10) days from the date of this order, what steps the respondents have taken to comply herewith.

3. On August 27, 1946, the Board's decision and order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondents' counsel.

4. Pursuant to Section 10 (e) of the Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

5. In order to conform with the requirements of Section 8 (c) of the Act, as amended, the Board recommends modification of the foregoing order as follows:

(a) By inserting in the first line of paragraph 1 (a) thereof the word "or" after the word "persuading," by deleting the comma after the word "warning," and by inserting after the word "warning" the words "by threat of reprisal or force or promise of benefit," so that the first line thereof will read, "Urging, persuading or warning by threat of reprisal or force or promise of benefit or coercing their employees."

(b) By inserting after the first sentence of paragraph 2 (c) thereof the following sentence: The first sentence of the third subparagraph of the aforesaid notice shall also be modified by inserting the word "or" after the word "persuade," by deleting the comma after the word "warn," and by inserting after the word "warn" the words "by threat of reprisal or force or promise of benefit," so that the first line of the first sentence shall read: "We will not urge, persuade, or warn

by threat of reprisal or force or promise of benefit, or coerce our employees to join."

6. In order to conform with the policy expressed in Section 9 (f) (g) and (h) of the Act, as amended, of withdrawing the aid of the Act's processes from a labor organization which fails to comply with the provisions of Section 9 (f) (g) and (h), to the extent only that the unfair labor practice involves a refusal to bargain to be remedied by an order to bargain, the Board recommends modification of the foregoing order as follows:

- (a) By inserting after the letters "CIO" in the second line of paragraph 1 (d) thereof the following phrase: If any when said labor organization shall have complied, within thirty (30) days from the date of the decree enforcing this order, with Section 9 (f) (g) and (h) of the Act, as amended,
- (b) By inserting after the words "Upon request" in the first line of paragraph 2 (b) thereof the following phrase: And upon compliance by the Union with the filing requirements of the Act, as amended, in the manner set forth above,
- (c) By inserting after the words, "notice attached hereto," in the second line of paragraph 2 (c) thereof, the following phrase: Modified to include the following phrase to be inserted after the first sentence of the first subparagraph of the notice and to be preceded by a semicolon: "provided that said

labor organization, and any national or international labor organization of which it is an affiliate or constituent unit, shall have complied, within thirty (30) days from the date of the decree enforcing the Board's order, with Section 9 (f) (g) and (h) of the National Labor Relations Act, as amended."

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceeding and of the questions to be determined therein and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon so much of the order as set forth in paragraph (2) hereof, as modified in paragraph (5) and (6) hereof, a decree enforcing said order of the Board, with the modifications recommended herein, and requiring respondents, and each of them, and their officers, agents, successors, and assigns to comply therewith. The Board further prays that this Court, in enforcing the order, with the modifications recommended herein, shall provide that the aforementioned notice, as modified, to be posted by respondents, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by

a decree of the United States Circuit Court of Appeals for the Ninth Circuit, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:."

RUTH WEYAND,

Acting Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 28th day of April, 1948.

APPENDIX A

Notice to All Employees

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all the employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: All production and maintenance employees at our Los Angeles plant excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect

changes in the status of employees, or effectively recommend such action.

We will not recognize Stove Mounters International Union of North America, Local 125, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representatives of any of our employees for the purpose of collective bargaining, or give effect to the contracts now existing with said organizations, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of our employees.

We will not urge, persuade, warn, or coerce our employees to join the I. A. M. or any of the A. F. of L. unions above-named, and we will not discourage membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization, or encourage membership in the I. A. M. or any of the above-named A. F. of L. unions, or any other labor organization.

All our employees are free to become or remain members of United Steelworkers of America, Stove

Division, Local 1981, CIO, or any other labor organization.

O'KEEFE & MERRITT
MANUFACTURING CO.,
Employer.
PIONEER ELECTRIC
COMPANY,
Employer.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia, ss:

Ruth Weyand, being first duly sworn, states that she is Acting Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that she is authorized to and does make this verification in behalf of said Board; that she has read the foregoing petition for enforcement and has knowledge of the contents thereof; and that the statements therein are true to the best of her knowledge, information and belief.

/s/ RUTH WEYAND,
Acting Assistant General
Counsel.

Subscribed and sworn to before me this 28th day of April, 1948.

ROSE MARY W. FILIPOWICZ,
Notary Public, District of Columbia.

My Commission Expires March 15, 1953.

[Endorsed]: Filed May 3, 1948.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

On Petition for Enforcement of an Order of the
National Labor Relations Board

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board,
the petitioner herein, and, in conformity with Rule
19 (6) of the rules of this Court, files this statement
of points upon which it intends to rely in the above-
entitled proceeding and this designation of parts of
the record necessary for the consideration thereof:

I.

1. The Board's findings of fact that respondents
have engaged in and are engaging in unfair labor
practices within the meaning of Section 8 (1) and
(5) of the National Labor Relations Act are sup-
ported by substantial evidence.

2. The Board's order is valid and proper under
the Act.

II.

[Designation of parts of record omitted.]

* * * * *

/s/ RUTH WEYAND,

Acting Assistant General
Counsel.

NATIONAL LABOR RELA-
TIONS BOARD.

Dated at Washington, D. C., this 26th day of
April 1948.

[Endorsed]: Filed May 3, 1948.

United States of America—ss.

ORDER TO SHOW CAUSE

The President of the United States of America To:
O'Keefe and Merritt Manufacturing Company;
and L. G. Mitchell, W. J. O'Keefe, Marion
Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, 3700 E. Olympic Blvd., Los Angeles (23), California; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local 389, Att: Mr. John Stevenson, 846 Union, Los Angeles, Calif.; United Steelworkers of America, Stove Division, Local 1981, CIO; Att: Mr. Milton S. Tyre, 111 West 7th St., Los Angeles, Calif.; International Brotherhood of Electrical Workers, Local B-11, Att: Mr. C. DeMontreville, 1669 E. Anaheim, Wilmington, Calif.; Stove Mounters International Union of America, Att: Mr. Arthur Garrett, 756 S. Broadway, Los Angeles, Calif.; International Association of Machinists, Att: Mr. Dale O. Reed, 420 Van Nuys Building, Los Angeles, Calif.; and Brotherhood of Painters, Decorators & Paperhangers, Local 792, Att: Mr. Alexander H. Schullman, 215 W. 5th Street, Los Angeles, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 3rd day of

May, 1948, a petition of the National Labor Relations Board for enforcement with modifications of its order entered on August 26, 1948, in a proceeding known upon the records of the said Board as In the Matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, etc, et al., Case No. 21-C-2689," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 4th day of May in the year of our Lord one thousand, nine hundred and forty-eight.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named Pioneer Electric Co. by handing to and leaving a true and correct copy thereof with Fred F. Rotter. Designated to accept service, by O'Keefe & Merritt & Pioneer Electric Co. personally at Los Angeles in said District on the 26th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named O'Keefe & Merritt by handing to and leaving a true and correct copy thereof with Fred F. Rotter authorized to accept service for O'Keefe & Merritt personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named Stove Mounters International Union of America by handing to and leaving a true and correct copy thereof with Arthur Garrett. Designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named Brotherhood of Painters, Decorators & Paperhangers, Local No. 792, by handing to and leaving a true and correct copy thereof with Alexander H. Schullman, designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named United Steel Workers Of America, Stove Division, Local 1981, C.I.O., by handing to and leaving a true and correct copy thereof with Mr. Milton S. Tyre, designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named International Association Of Machinists, by handing to and leaving a true and correct copy thereof with Dale O. Reed, designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 389, by handing to and leaving a true and correct copy thereof with John Stevenson personally at Los Angeles in said District on the 10th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named International Brotherhood of Electrical Workers, Local B, II by handing to and leaving a true and correct copy thereof with Mr. C. DeMontreville, designated to accept service personally at Wilmington in said District on the 10th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ EARL C. FRIES,

Deputy.

[Endorsed]: Filed May 29, 1948.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT WITH MODIFICATIONS OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Come now the above named respondents and in answer to petition on file herein allege as follows:

I.

That the order of the National Labor Relations Board is void and of no effect, in that the findings of fact are not supported by any evidence.

II.

That the order of the Board is null and void in that it is in violation of the First Amendment of the Constitution, and does abridge the right of free speech as defined in the Labor-Management Relations Act of 1947.

III.

That the order is not enforceable in that it constitutes an enforcement of extraordinary remedy by a blanket injunction.

IV.

That the question presented by the Petition has become moot in that all employees of both concerns are and have been members in good standing of the various Crafts of the American Federation of Labor for over two years prior to the filing of the Petition herein.

V.

That the United Steelworkers of America Stove Division, Local 1981, CIO et al have not complied with the provisions of the Labor-Management Act of 1947, in that they have not filed affidavits of the officers of the union stating that each is not a Communist, as provided by paragraph (h) of Section 9 of the Labor-Management Relations Act of 1947.

VI.

That the remedy requested in said Petition is inconsistent with the Labor-Management Relations Act of 1947 wherein it provides that, other things being equal, the Board should allow the craft preferences of the employees; that the employees' preference, as herein above set forth, is 100% various American Federation of Labor crafts.

/s/ CECIL W. COLLINS,

Attorney for Respondents.

Dated at Los Angeles, California, this 14th day of June, 1948.

State of California,

County of Los Angeles—ss.

D. P. O'Keefe, being first duly sworn, states that he is president of O'Keefe & Merritt Manufacturing Co., one of the respondents herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer to petition and has knowledge of the contents thereof; and that the statements therein are

true to the best of his knowledge, information and belief.

/s/ D. P. O'KEEFE.

Subscribed and sworn to before me this 14th day of June, 1948.

[Seal] /s/ CECIL W. COLLINS,
Notary Public in and for the State of California,
County of Los Angeles.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 15, 1948.

[Title of Circuit Court of Appeals and Cause.]

On Answer to Petition for Enforcement of An
Order of the National Labor Relations Board

STATEMENT OF POINTS RELIED UPON BY
THE RESPONDENTS AND DESIGNA-
TION OF PARTS OF THE RECORD
NECESSARY FOR THE CONSIDERA-
TION THEREOF

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Come now O'Keefe and Merritt Manufacturing
Company, and L. G. Mitchell, W. J. O'Keefe,
Marion Jenks, Lewis M. Boyle, Robert J. Merritt,
Robert J. Merritt, Jr., and Wilbur G. Durant, in-
dividually and as co-partners, doing business as
Pioneer Electric Company, respondents herein, and,
in conformity with the rules of this Court, files this

statement of points upon which it intends to rely in the above-entitled proceeding:

I.

Statement of Points

1. The respondents incorporate herein, the same as though set forth in full at this point, all of the matter set forth in their answer to the Petition of the National Labor Relations Board.

II.

Designation of Parts of Record

1. The respondents allege that due to the complexity of this matter, and in order to properly present respondents' case, it is necessary to have available the entire record, and respondents request that in addition to those parts of the record designated by petitioner, all of the rest of the record be incorporated therein.

/s/ CECIL W. COLLINS,

Attorney for Respondents.

Dated at Los Angeles, California, this 14th day of June, 1948.

[Endorsed]: Filed June 15, 1948.

Before the National Labor Relations Board
Twenty-First Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as Co-partners, d/b/a PIONEER ELECTRIC COMPANY
and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, C. I. O., and STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96, for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS

AND PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; AND REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

Room 704, Board of Trade Building,
111 West Seventh Street,
Los Angeles, California,

Wednesday, March 6, 1946.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m. [1*]

Before: Henry J. Kent,
Trial Examiner.

Appearances:

Maurice J. Nicoson and Eugene M. Purver, 111 West Seventh Street, Los Angeles, California, appearing on behalf of the National Labor Relations Board.

Cecil W. Collins, 3700 E. Olympic Boulevard, Los Angeles, California, appearing on behalf of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr.,

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

and William J. Durant, individually and as co-partners, doing business as Pioneer Electric Company.

Katz, Gallagher & Margolis, By: Milton S. Tyre, 111 West Seventh Street, Los Angeles, California, appearing on behalf of United Steelworkers of America, Stove Division, Local 1981, CIO.

C. DeMontreville, Brice Worley and James Wolf, 1669 E. Anaheim, Wilmington, California, appearing on behalf of International Brotherhood of Electrical Workers, Local Union B-11, A. F. of L.

Arthur Garrett, 756 S. Broadway, Los Angeles, California, appearing on behalf of Stove Mounters International Union of North America, Local 125; International Moulders & Foundry Workers Union of North America, Local 376; United Brotherhood of Carpenters & Joiners of America, all affiliates of American Federation of Labor. [2]

Dale O. Reed, 420 Van Nuys Building, Los Angeles, California, appearing on behalf of District Lodge 96, for and on behalf of its affiliate Local 311, of the International Association of Machinists, A. F. of L.

John Stevenson, 846 S. Union, Los Angeles, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.

Alexander H. Schullman, 215 West Fifth Street, Los Angeles, California, appearing on behalf of Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L. [3]

PROCEEDINGS

Trial Examiner Kent: Are the parties ready to proceed?

Mr. Nicoson: The Board is ready.

Mr. Collins: I have a motion to make on behalf of one of the respondents. With that exception we are ready.

Trial Examiner Kent: I will entertain that. I will make a short formal opening statement before we proceed to take that.

This is a formal hearing before the National Labor Relations Board in the matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union, of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311, of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American [5] Federa-

tion of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor; the various A.F.L. unions apparently being parties to a contract.

The Trial Examiner, namely, myself, appearing for the National Labor Relations Board is Henry J. Kent; K-e-n-t.

At this time I would request counsel to state all appearances orally for my benefit.

Mr. Nicoson: Maurice J. Nicoson and Eugene M. Purver for the Board.

Mr. Tyre: Wilton S. Tyre from Katz, Gallagher & Margolis, Attorneys for United Steelworkers of America, Stove Division, Local 1981, C.I.O.

Mr. Garrett: Arthur Garrett, attorney for Stove Mounters Local 125 named as Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor;

Attorney for Moulders & Foundry Workers, Local 374, named herein as International Moulders & Foundry Workers Union of North America, Local 376;

And Attorney for Los Angeles County District Council of Carpenters named here as United Brotherhood of Carpenters & Joiners of America.

All the organizations I represent are affiliated with the [6] American Federation of Labor.

Trial Examiner Kent: Well, do you represent the various A.F.L. unions named in the caption of the complaint?

Mr. Garrett: I represent the three organizations for which I have just orally entered my appearance.

Trial Examiner Kent: I see.

Mr. Garrett: And the organizations named here, together with the complaint, I understand, on the theory of some alleged connection with the contract involved in this case.

I don't know whether to describe the organizations for which I appear as respondents. They are certainly not complainants. Possibly I should say they are interested parties.

Mr. DeMontreville: International Brotherhood of Electrical Workers, Local Union B-11, American Federation of Labor; C. DeMontreville and James Wolf, Economic Counsel.

Mr. Stevenson: John Stevenson, Teamsters Union, Local 389.

Trial Examiner Kent: What is that local again?

Mr. Stevenson: 389.

Trial Examiner Kent: That is Teamsters?

Mr. Stevenson: Yes.

Mr. Collins: Cecil W. Collins, representing O'Keefe and Merritt Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually and as co-partners, doing [7] business as Pioneer Electric Company.

Mr. Reed: Mr. Trial Examiner, I would like to enter on the record that Dale O. Reed is appearing for the Machinists in this case.

Trial Examiner Kent: What is the name again on that last?

Mr. Reed: The last appearance?

Trial Examiner Kent: Yes.

Mr. Reed: Dale O. Reed on behalf of the International Association of Machinists.

Trial Examiner Kent: Are there any other parties present in the hearing room claiming to have an interest?

Mr. Collins: It has just been called to my attention by Mr. Collins of the Painters that he is to be represented by Mr. Schullman, who will be here later.

Trial Examiner Kent: The Painters?

Mr. Collins: The Painters will be represented by Mr. Schullman.

Trial Examiner Kent: Will some of the other A.F.L. representatives present inform Mr. Schullman to formally enter his appearance when he appears?

A Voice: Mr. Schullman, I think, will be about 10 or 15 minutes late. He notified me by phone he would be. He should be here by 10:20.

Mr. Nicoson: Mr. Trial Examiner, this may not be the [8] appropriate time for this, but since Mr. DeMontreville has entered an appearance on behalf of the I.B.E.W., and so far as the complaint is concerned, no allegations are made about that organization, I would like to inquire for what purpose he appears.

Mr. DeMontreville: We have a 100 per cent membership among the electrical workers, and we are merely here to protect whatever interest might arise for that unit.

Mr. Nicoson: I would, in that case, your Honor, request that he follow the rules and regulations as to procedure to intervene and file his written motion and have it ruled upon, at which time I would like to be heard.

Trial Examiner Kent: Yes. I think Mr. Nicoson's objection is well taken. I think you should formally file a motion to intervene in writing.

Mr. DeMontreville: We will.

Trial Examiner Kent: I will state this: If you are not prepared to now, why, I think the Board certainly won't finish its case today. Will it; do you think?

Mr. Nicoson: I doubt it.

Trial Examiner Kent: If you will have that ready to present at 2:00 o'clock—or if we were to take a short recess at this time can you have it ready?

Mr. DeMontreville: Yes.

Trial Examiner Kent: All right. I want to check the [9] pleadings, anyway. I want to make this statement and then we will entertain a written motion to intervene after a short recess.

Hearing no other parties claiming an interest in these proceedings, I, therefore, assume there are none.

The official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The

Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval it will be submitted to the Trial Examiner.

In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made.

If the parties have been unable to agree upon such corrections before the close of the hearing, but have entered into a stipulation concerning such matters after the close of the hearing, but before the transfer of the case to the Board, such stipulations or motions should be addressed to the [10] Trial Examiner in care of the Chief Trial Examiner, Rochambeau Building, Washington, D. C. After the transfer of the case to the Board, all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board the Trial Examiner's connection with the case ceases.

Since this is a formal hearing we shall maintain the dignity and decorum that usually accompanies judicial proceedings.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Off the record discussion or argument will not be included in the official tran-

script unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record shall be directed to the Trial Examiner and not to the reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner. All exhibits offered in evidence should be in duplicate.

At the close of the hearing the parties may, if they so [11] request, argue orally before the Trial Examiner, or at such time if the Trial Examiner believes that oral argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved, he may request oral argument from the parties and will feel free to discuss with and ask questions of counsel or representatives of the parties with respect to their contentions as to the issues, the facts and legal principles involved. Oral argument at the close of the hearing will not be included in the stenographic report of the hearing unless the Trial Examiner at the time so directs.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, who at that time will indicate the time within which said briefs should be filed.

Five copies of briefs should be directed to the

Trial Examiner, in care of the Chief Trial Examiner in Washington.

I make this statement at this time so the counsel may schedule their time accordingly.

At this time we will take a recess for about 20 minutes in order that I may have an opportunity to check the pleadings.

Mr. Stevenson: Mr. Examiner, before you recess I wonder if we might be permitted to make a motion here.

Trial Examiner Kent: It might be well, so I will have [12] your matter before me when I check the pleadings, and I will reserve ruling.

Mr. Stevenson: On behalf of the Teamsters, Local 389, we are asking for a continuance in this matter for time to prepare an answer and prepare evidence in the case.

This complaint I first had the opportunity of going over yesterday. It is absolutely impossible in the time, even intervening between the service of the complaint and the time set for this hearing, for us to have prepared any case at all to present to the Board.

I might add that the date set for this hearing was set without any consultation insofar as our organization was concerned. I have a case set in San Diego in the Superior Court and I have another set in Santa Ana on Friday in the Superior Court, both of which require preparation. It is absolutely impossible for me to attend these hearings and represent my clients in the matter. It is my belief that in order to give us any opportunity to prepare a

case whatever that some date mutually agreeable to counsel be set so we can arrange a schedule or calendar accordingly.

It is impossible for any attorney these days, who is at all occupied, to have an arbitrary date set in this fashion, without consultation, and come down and spend three or four or five or six days in one of these hearings.

I know that, insofar as the Teamsters organization is [13] concerned, unless we are given time and a date which is in conformity with court cases already set, we might just as well abandon the hearing. We can't present a case to the Board. It is an impossibility. We cannot get continuances on the cases in Superior Court, either in San Diego or Santa Ana. They are both injunction matters. So we are going to ask the Board for a continuance in this matter, giving us an opportunity to prepare a case to present to the Board. [14]

Now, I want to call the attention of the Examiner to the fact that neither I nor any of the other counsel in this case were given even 10 days customary time to answer, much less any consideration in the matter of setting a trial date. With that sort of procedure we cannot do anything in the way of preparing a defense.

Mr. Collins: Mr. Trial Examiner, on behalf of the respondents Pioneer Electric and O'Keefe and Merritt. I wish to join Mr. Stevenson's motion for a continuance.

I have the further ground, represented by an affidavit of one of my defendants, that one of the

defendants, Marion Jenks, is in Honolulu, Hawaii. Mr. Durant, one of my clients, at the time I was served with this, to wit, on the 25th of February, was on his way back from Washington, D. C. At least at the time we made out the affidavit we thought that was where he was. We subsequently found out he arrived at his home in Pasadena for one hour Saturday afternoon, the 23rd, and he made arrangements to be married in Las Vegas, and made arrangements to go to Las Vegas within an hour. He didn't return until the following Wednesday. Neither Mr. Durant nor Marion Jenks have had an opportunity within the rules of the court itself to file their answer. I am here to protect their rights in whatever manner I can.

I would like to also point out to the Trial Examiner I called Mr. Stewart Meacham, the Regional Director, in [15] ample time and asked for a continuance. He stated to me at that time he wouldn't give any continuance, not even a short week, to get hold of my clients in Hawaii and Washington, D. C. We are forced into a hearing to do the best we can. I am not prepared to represent these people at this time. We have had no opportunity to confer. I have not had an opportunity to confer with them. I have had no opportunity to confer with my clients in one group, to sit down and confer with them about their rights and the facts of this case. I feel we are entitled to a reasonable continuance, not only as a matter of courtesy but as a matter of right under Section 10 of the rules of this Board. We are

entitled to 10 days within which to answer. We haven't received that right.

This amended complaint was served on my clients the 27th, received by registered mail. As a matter of fact, five or six of the people I represent have not been actually served with this complaint. It was addressed to their place of business and received by some employee. It seems to me most irregular that we should be forced into this so fast.

Like Mr. Stevenson, I have other law business that has to be taken care of. We can't go into the Superior Court to ask them to grant a continuance because this Board will not grant one.

To support my motion for continuance, I would like to [16] file an affidavit signed by L. J. Mitchell authorizing me to request a continuance, and also a letter to Mr. Stewart Meacham, Regional Director, signed by Mr. O'Keefe of O'Keefe and Merritt Company.

Trial Examiner Kent: I understood you to say service was made on February 25th.

Mr. Collins: That was on one.

Trial Examiner Kent: Of the second amended complaint?

Mr. Collins: Of the second amended complaint.

Trial Examiner Kent: There was prior service of the original complaint?

Mr. Collins: Not on Mr. Durant. He was in Washington, D. C.

Mr. Nicoson: I would like to be heard before you rule on the motion.

Trial Examiner Kent: I am not going to rule until after I consider the pleadings as a whole. I would be glad to hear from you at this time.

Mr. Garrett: I have another motion to make prior to the time Mr. Nicoson replies. If you don't mind, Mr. Nicoson.

Mr. Nicoson: Oh, no. Go right ahead.

Mr. Garrett: On behalf of the Stove Mounters and Molders and the Carpenters, I similarly move for a continuance of this trial for the purpose of enabling those organizations to prepare what matter, by way of reply, is required from [17] them in this case.

This business of the Board setting these hearings on very short notice and without consultation with the parties involved, as to other previous trial engagements, and that sort of thing, it is becoming pretty serious. It was even worse than that up to recently when the National War Labor Board was doing the same thing.

There is a relatively small group of attorneys in this city who handle the interests of most of the labor organizations on one side or the other, the C.I.O. or the A.F.L. side. They are busy. They have trial engagements in the courts of record of this State which have been made on motion, so that the convenience of counsel on both sides could be consulted. Those trials having been set, I am in the same position Mr. Stevenson is with injunction cases, that intervene during the course of time this hearing will normally take, and are cases I can't get continued, hearings of trials I can't get

continued. Mr. Schullman will probably turn out to be in the same position.

Trial Examiner Kent: I am wondering, with so many counsel appearing, if it would ever be possible to get a date mutually satisfactory to all of you.

Mr. Stevenson: It would, just like a court trial.

Trial Examiner Kent: Somebody else would come in and raise the same question. [18]

Mr. Collins: There is nothing unusual about this, Mr. Trial Examiner. It is the same in any court appearance. We have the same problem there. This Board is arrogating itself arbitrarily, forgetting everybody else's convenience other than its own.

Mr. Garrett: I don't think anybody is arrogating anything. I realize the situation of the Board. There is something to what your Honor says.

Suppose Mr. Stevenson represents the Teamsters here all over Southern California and I represent the Carpenters and the other organizations and DeMontreville represents the Electricians and Schullman represents the Painters——

Trial Examiner Kent: There is another serious problem that confronts the Board that doesn't even confront the ordinary court. The judge in the State and Federal Court have a docket of cases pending in the particular forum. If a continuance is granted in one case, he can immediately be transferred to another case. But the way the docket of the Board is made up the Trial Examiner has to be sent out

and it just ties up, disrupts the entire trial docket.

Mr. Garrett: I am going to agree with your Honor in the statement you made.

Trial Examiner Kent: There was one continuance in this case.

Mr. Garrett: In this case? [19]

Trial Examiner Kent: I don't know currently what the reason for it was, but the file I checked in Washington before I came had the original complaint, and I think it was originally set for hearing on February 27th, if my recollection is right, and then the case for some reason or other was continued until March 6th, so that the statement that the parties had some knowledge, and I would think an opportunity to generally prepare for this case—though I notice there are a lot of additional American Federation of Labor Unions named as parties in the amended complaint. I think before it was the Stove Mounters and the Metal Trades Council of Los Angeles.

Mr. Garrett: I am glad your Honor has proved willing to discuss this matter with me, because we are going to be able to arrange things now so your Honor doesn't rule on these motions under any misapprehension. If you didn't discuss it, you would be in danger of doing someone a substantial injustice.

You are quite right. When you have Stevenson and myself and Schullman, you are probably not going to be able to set any date that will be agreeable to all our calendars, arbitrarily or otherwise, if you do it on ten days' notice. [20]

The point is, however, that that would be true of almost any situation. You can't set hearings on 10 days' notice and not cut across the trial engagements of attorneys and also the substantial rights of the parties.

Now, the only thing I have ever seen in this case—I have a file here and it has three documents in it. One is a document stating that an attorney who might have been able to handle the case is absent in San Diego. I think he was down there with Mr. Stevenson.

Another is a copy of a letter which company's counsel has just filed. And a third is a copy of the second amended complaint with notice of hearing on this date, which shows, according to my office stamp, that it was received on February 26th, probably from one of the parties whose name I have entered my appearance for today. That was last week, wasn't it? There was a holiday intervening. We have been up here on another hearing in that time.

I don't know anything about the original complaint or the first amended complaint. I have received this second amended complaint and I have had time before coming in here to do just one thing in connection with this case, and that is read the second amended complaint.

Trial Examiner Kent: Let me ask a question. When was service of the amended complaint made upon your clients?

Mr. Garrett: I would assume that it was served on the [21] preceding day or the same day as re-

ceipt in my office, as shown by my office stamp. It was received on February 26th in my office. That is just 10 days ago. Is it? Or less than 10 days; nine days ago.

This particularly copy, I believe, was sent over by a messenger from the District Council of Carpenters. I was informed on the day after they received it. They called me up in the evening. It was too late to meet them. I said, "Send it over here the first thing tomorrow morning."

If I may be permitted to indulge in some speculation—perhaps unfounded, based entirely upon a reading of the complaint—this case has some of the aspects of some very important cases that have been litigated in this region in hearings that sometimes ran into months. Some very serious accusations are levelled against a number of people in this complaint. The complaint constitutes the basis for what would seem to me should be very serious and carefully prepared and conducted litigation.

Trial Examiner Kent: You complain about the Board providing 10 days' notice. Of course, Congress only provides five. The Board voluntarily extended that notice.

Mr. Garrett: I don't complain about any procedural actions of the Board, because I know it isn't going to do me any good to complain about them. I do complain, and I address [22] this thought to the consideration of one who seems to be inclined to want to be a fair trier of the issues involved in this case: I assume your Honor hasn't

prejudged, I assume your Honor understands the vital interests of the American Federation of Labor Unions which are affected, even though they are not defendants or respondents in this case.

Trial Examiner Kent: Yes, there is no question about that. There is no question but that you are apparently parties entitled to your day in court.

There are a number of you. Your interests, while they are not identically the same, all the various A.F.L. Unions, it seems to me—not as yet being familiar with the whole picture—to be substantially similar. I don't see why some two or three counsel couldn't represent all of you, if on certain days of the hearing all of you are not able to be here, all of you are not able to be present. We would have the difficulty, anyway, you gentlemen are raising now no matter what day we grant continuances to. We will be having other men come in and raise the same question.

Mr. Garrett: As far as I am concerned, I don't expect to get any more consideration for my trial calendar in this court than I get from judges of the Superior and other courts, which is practically none on many occasions.

I address my objections, not so much to the havoc that is raised with the interests of the attorneys here and other [23] clients of those attorneys not represented here, I address my remarks, in an attempt to raise the question in your Honor's mind as to whether scheduling a hearing without notice, giving the parties adequate time to prepare, is not in effect a denial of the right of trial itself, and

whether or not the period of notice shouldn't have some rational relationship to the seriousness of the case and the length of time it will take to prepare the defense or the position, the length of time it will take to go into a situation and the circumstances under which the document upon which the trial is to be had came into the hands of the parties.

Now, it is absolutely clear, as you apparently know, from the records, that the people I represent haven't been in here before a matter of nine days ago. There is something else I notice, too, and that is the very people who might be in a position, who know the most about this transaction on the A.F.L. side, who might be in a position, you might say, to have some previous training through experience with the facts and how to defend the case, that is, the local Metal Trades Council, have for some reason been dropped out of this complaint and aren't here to give assistance. Apparently they were the people that were active in negotiations on behalf of all the A.F.L. Unions with the company.

Mr. Nicoson: I don't concede that is apparent.

Mr. Garrett: Well, is it a fact? This is a motion for continuance, after all. I think it is a fact.

Mr. Nicoson: I think we ought to stick to facts, then, Mr. Garrett.

Mr. Garrett: Of course, I haven't any affidavits.

Mr. Nicoson: No, sir.

Mr. Garrett: If that statement is not true, it is not true. If Mr. Nicoson can say it isn't true, that the Metal Trades Council should have a superior

knowledge of the facts involved in this case, to me or to Mr. Stevenson, if he can say that isn't true, he can say so, and I will withdraw the contention. If it is true, my clients go to trial on a complaint they received on February 25th or the 26th. Then, apparently, they didn't know they were going to be joined in any action until that was received. They go to trial with one organization which would have the most intimate knowledge of the facts for some reason no one except the State or the prosecutor knows was dropped out of the litigation, and they go to trial on a case that is too serious for anybody to prepare in the time before February 26th and between February 26th and today.

These other men, they have had plenty of time to think this thing over and investigate and get the reports of their field examiners in. They have gone through this. This is the second amended complaint. There isn't any justice in [25] the relationship between the time the parties, on one side, and the parties, on the other, are given.

Trial Examiner Kent: Well, according to the affidavit of service the amended complaint——

Mr. Garrett: Is that the second amended complaint?

Trial Examiner Kent: Yes. Well now, let's see. Wait a minute. No, it wouldn't have been the second one.

Well, the affidavit of service indicates that the second amended complaint and order of postponement of the hearing was mailed on February 21, 1946.

Mr. Garrett: The next day was a holiday. And the next day was a Sunday; wasn't it?

Mr. Nicoson: Saturday.

Mr. Garrett: Saturday. The next day was when the union office wasn't open; nobody could have had it until the 25th.

Trial Examiner Kent: In any event, it seems like there was full 10 days' time.

Mr. Garrett: Is there a return registry receipt there?

Trial Examiner Kent: I haven't it. I have a partial file. I will listen to Mr. Nicoson.

Mr. Stevenson: May I say this:—

Mr. Nicoson: Yes.

Mr. Stevenson: Insofar as we are concerned, in the first place, Mr. Examiner, your rule does not compel and no common sense can compel these defendants to come to trial in 10 days. [26] The rule says that they shall be given 10 days to answer, and additional time on motion if cause is shown for that additional time.

Now, that is 10 days to answer. Here we are being forced into a trial less than ten days, without any reference to calendar hearings.

Now, we have to observe some common sense in this matter. Every attorney here—it doesn't matter who it is—has cases. For instance, I have a case set in Santa Ana on Friday. I can't delegate my representation of my organization to anybody. There is no reason why an attorney in a case like this should be forced to try to delegate them to anybody. [27]

Mr. Garrett has lots to do besides going out and preparing my case for me. I have a great deal to do in preparing my own case, besides worrying about his interest during the course of this trial.

Now, we just can't be here during the trial. I want to say, insofar as the Teamsters are concerned, if we are forced to come into a hearing with no consultation whatsoever, with no regard being taken to our previous engagements in court, with no time to answer the complaint, not even the time fixed by the Board under its rules, we are just simply going to have to make that statement to the Board and walk out. We have had no time to prepare evidence in a matter like this.

I am sure, if you have had experience with the courts, that you wouldn't want to be forced into court on a case on as short a time as five or six days' preparation with all of the other things you have; never minding the necessity of getting hold of the various parties and trying to get some evidence up.

In this case the evidence lies within the knowledge largely of men who aren't even in town. I have had no chance whatever to confer with any of the parties named here. We are accused of being parties to an illegal contract. I haven't had any opportunity to confer with a single man in the company employ or the executives to find out what the situation is, the true situation, with regard to this corporation, with regard to the change from the O'Keefe and Merritt Company to the Pioneer Electric Company, with regard to assembling evidence in that matter. It is out of the question to try to

assemble evidence under those circumstances. I can't conceive of that sort of procedure being followed in a case involving four or five attorneys here, with no chance to prepare.

Trial Examiner Kent: How many employees are represented by your Union?

Mr. Stevenson: By the Teamsters?

Trial Examiner Kent: Yes.

Mr. Stevenson: The exact number at the place, I don't know. Every person driving trucks for Pioneer Electric is a member of the Teamsters Organization. All of them, the entire unit.

Trial Examiner Kent: About how many is that?

Mr. Stevenson: I would have to ask.

Mr. Nicoson: That is about twenty.

Mr. Stevenson: How many are there?

A Voice: Approximately eighteen.

Mr. Stevenson: Eighteen. The number of the employees is beside the question. Here is the situation we are confronted with: We are confronted with a situation where the Teamsters are being accused in this complaint of being parties [29] to an illegal contract, whether there is one employee or fifty or five thousand; that is a vital question to us.

I don't think we should be forced to try to come in here with no chance whatever to prepare any sort of a defense. We can't do it. We will simply have to withdraw, and go ahead and hold the hearing and do anything the Board wants to do with it. I can't do that without entering my protest on the record. I have had no opportunity whatever to prepare any sort of a case here.

Now, it isn't unreasonable to ask, in a case like this, for time. It is unreasonable to set a hearing less than 10 days from the time we receive service, when the rules provide 10 days for filing of an answer, and then a hearing date set after that. Time for amendments, time for motions after the 10 days. If it isn't sufficient the rules provide we should be given additional time. We are not even given time to file the original answer, much less additional time.

Mr. Schullman: I just came into the room, Mr. Trial Examiner. I appear on behalf of the Brotherhood of Painters, Decorators and Paperhangers of America, Local 792.

I just heard the last remarks of Mr. Stevenson. I join in a motion, I presume is being made, for a continuance. I got a telephone call. I was elsewhere. I was told there was a conference. I didn't know there was even a hearing.

I have just been handed for the first time a paper. I realize that dereliction can't be visited on the Board, but probably on my clients. Nevertheless, as I hear Mr. Stevenson's statement, apparently the time elements that are involved in the Act itself haven't been complied with. I don't know. I am not familiar with the facts behind it, and I wouldn't attempt to discuss it logically or sensibly without going into it. But as counsel who has just been retained informally, in this matter, representing the group I mentioned, I certainly join in a motion for continuance.

I know, as least so far as my clients are concerned, I don't think you could have a due process hearing without notice and a chance to have counsel. I don't think there has been any delay so far as I understand, so far as my clients are concerned in having counsel. We formally join in the motion.

I will be very happy to supply some cases where the NLRB attempts to proceed without complying with its own procedural rules, and deprives the litigant of a chance to go into the issues.

And more importantly I might mention this: Without being familiar with the facts—I am not going to attempt to discuss it—but presumably this is a hearing between different contending groups. The fact a motion has been made for continuance indicates to me, without having been here, that apparently one of the parties or more object to [31] the continuance. I think all of us are more interested, under the NLRB, in getting actual representation as the Act provides.

If facts are necessary to be adduced before this Examiner, opportunity should be given, rather than precipitously plunging into a hearing without that information.

We, therefore, reiterate our request and move for such a continuance. If the Examiner orders us to go ahead, we will then jurisdictionally have to object to the jurisdiction having been deprived of due process in behalf of Local 792.

Mr. Nicoson: May I inquire of the parties how much postponement they want, so I can see what I have to meet? They have all come in here and

asked for a postponement. None of them have been definite enough to even hint at the time.

Mr. Stevenson: I think that is a matter of procedure that is followed by the courts. Let's try to get together and fix a trial date within a reasonable time to suit everybody. Maybe it won't suit everybody. Maybe I will have to make a sacrifice, maybe the Company will have to, maybe Mr. Garrett will, but we are glad to do that.

Mr. Schullman: Don't forget Mr. Schullman.

Mr. Stevenson: Mr. Schullman might do that, too. I don't know. [32]

Trial Examiner Kent: Mr. Schullman, somebody mentioned the fact you would enter an appearance.

He represents one of the Unions?

Mr. Nicoson: That is correct. He represents the Painters.

Mr. Schullman: I might say this is entirely completely whole blush to me. I was told I wasn't coming to a hearing. I asked for a conference room. So I certainly am entitled to something. I would want to file an answer. I haven't had a chance to. I don't even know which gentleman is my client here. Let's not proceed—

Trial Examiner Kent: I would assume, if there has been any negligence, it has been on the part of your clients.

Mr. Schullman: There would be negligence if there had been time involved. From what I understand time for an answer hasn't expired. There-

fore, I would ask now for a reasonable time in which to file an answer on behalf of my clients.

Trial Examiner Kent: The answer should be filed. You have the privilege of filing an answer within ten days after service of notice of hearing and copy of complaint upon your clients.

Mr. Schullman: That is correct. Now I am asking for additional time which, incidentally, the courts grant in such situations where new counsel gets in a case. This isn't [33] a one or two-month's delay. Apparently the ten days in which they have been served hasn't been exhausted. All I am asking now is a reasonable time—not more than ten days—in which to file an answer.

Trial Examiner Kent: Let's look at it realistically. I assume that all of you gentlemen have represented clients in labor board matters before. You are generally familiar with our procedure.

Mr. Schullman: But not with the facts. I am not familiar with the facts involved. I think I am entitled to get familiar with them.

Mr. Nicoson: Your Honor, I don't agree with all that has been said here at this time. So far as the Company is concerned, I think the notice to them is adequate. They have had since around about February 14th, which is nearly a month ago, to meet this.

The amendments to the complaint have not been substantial. They have been merely clarifying the issues drawn. The issues now in this complaint are exactly the same as those in the original complaint.

So far as notice to the Company is concerned,

I am quite positive that it is adequate. I am prepared to prove that the so-called Mr. Durant, who was absent in Washington, actually and personally signed the notice of hearing in this matter at his home in Pasadena. I am prepared to prove [34] that.

Mr. Collins: I will stipulate that.

Mr. Nicoson: You said he was here for an hour.

Mr. Collins: He went from here to Las Vegas to get married.

Mr. Nicoson: I don't care where he went and what he went to do. He still had notice of this hearing in ample time. If he wants to go and get married and let this lawsuit go by the Board, that is Mr. Durant's business; it isn't mine.

Mr. Collins: Have you served Marion Jenks in Hawaii?

Mr. Nicoson: I don't care about Marion Jenks.

I am not opposed to a short postponement in this case. I would stipulate to a postponement of a week. I am agreeable to that, and I would consent to it. But anything longer than that I would be opposed to.

I think that, so far as these unions are concerned, if there has been a dereliction it perhaps has been between attorney and clients. I don't want to delve into that too much or point any finger. I happen to know of my own personal knowledge that these things have come to the attention, at least, of some attorneys, and I am prepared to prove they have come to the attention of the union.

Since I notice by my return receipts that two of

the receipts did not reach the unions until the 25th, which gives the gentlemen some basis for objection to proceeding, on [35] that basis——

Trial Examiner Kent: Yes, they are entitled——

Mr. Nicoson: ——they are entitled to further time. I am not objecting to a further postponement of a week in order to correct that discrepancy.

I am objecting to a postponement beyond that because, as the evidence in this case unfolds, we will be able to show quite definitely that one of the schemes of all these unfair labor practices is to delay, delay, delay the Board proceeding. [36]

For one, I am stating quite frankly here, before all counsel and before all representatives, that so far as the Board is concerned and so far as I, as an agent of the Board, is concerned, I am going to do all in my power to cut down any delay or any expense of time in the prosecution of this case.

Mr. Schullman: Mr. Examiner, I want to correct the record. I presume that counsel, Mr. Nicoson, is not referring to me as having knowledge of this before this present session.

Mr. Nicoson: That is right. I didn't know you were going to be here until today.

Mr. Schullman: Neither did I. I understand there is an amendment. This amendment involves my clients that were not parties here before, which changes the legal picture a little bit.

Trial Examiner Kent: Yes. That amended complaint, however, is dated February 20th.

Mr. Schullman: I am talking from the date of service.

Trial Examiner Kent: And service by mail was supposedly had on February 21st. Subject to Mr. Nicoson's statement that service was not had upon two of the parties until—what was that date?

Mr. Nicoson: 25th.

Trial Examiner Kent: The 25th. So that would seem to entitle those two parties to further two days. Of course, if they were getting it the logical thing to do would be to [37] grant it to all.

Mr. Schullman: As a matter of law, where you bring in additional parties and they are all tried in one litigation, the entire matter must go over. You can't try it piecemeal.

I think everybody is interested in getting into the facts; I know I am. I don't know a thing about this yet. I don't think a week will be sufficient so far as I am concerned. I don't see how I could possibly do it. I don't know in what respect my people are charged, where they come in. I haven't read anything yet.

I would like to ask, first, before anything is set, so far as my clients are concerned, for a period of 10 days in which to file a response or answer. I would like to have it set normally. I don't think that is undue delay. Undue delay is where we have been involved, where months elapsed, where no hearings were held. I think a week is a too quick a period to attempt to marshall all the issues involved, especially when there is no injury done. If an unfair labor practice is established, the Act itself gives complete remedy. Anybody affected thereby will be compensated for that unfair labor practice.

Trial Examiner Kent: There is an injury to the public. The Board expends money on these hearings. I would be out here without anything to do. I think the parties ought to consider that. There is a distinct public interest, I [38] think, on the grounds of the expenditure of public funds. We should co-operate and dispose of these matters promptly and expeditiously.

Congress, of course, in passing its Act thought five days was ample time for the parties to get their answer in. They don't have to answer. They can come in and orally participate. They are privileged to file the answer. The Board extended that five to ten days. So I don't think, in fairness to the parties that have urged this, they are unduly harmed.

I grant, if any attorney is tied up in another lawsuit at the time of the day of hearing, a short adjournment might be granted, but in this particular type of case where we have so many parties it is going to be almost impossible to set any day that will be mutually satisfactory to all of you.

Mr. Stevenson: I don't think that is true.

Trial Examiner Kent: I think, since there are so many AFL parties in here, you gentlemen ought to get together and do something to expedite this. The interests of all the unions is substantially the same in this case. I haven't read the complaint. I read the original one and I assume from Mr. Nicoson's statement the general issues and the amended issues are the same in the amended complaint. Let's be fair and realistic about it. Mr.

Nicoson said he didn't object to a week's adjournment.

Mr. Stevenson: I want to ask Mr. Nicoson——

Mr. Nicoson: If I may make this statement: I am willing to agree to postponing the hearing until the 18th of the month; no longer.

Trial Examiner Kent: One week?

Mr. Nicoson: The 18th. That is a week from this next Monday.

Mr. Stevenson: You say let's be realistic. All right, let's be realistic. He is talking about a week. This hearing will probably take two weeks of solid time. I am guessing at that. It may be a week, 10 days or three weeks.

Mr. Nicoson: I wouldn't go for three weeks.

Mr. Stevenson: Just a minute.

Mr. Tyre: We have heard from all these——

Mr. Nicoson: I withdraw my offer to agree to anything.

Mr. Stevenson: I don't care. I am not so particular whether it is agreed to or not. Let me continue for a moment, if I may. Every one of us have court calendars.

You tell me, or let Mr. Nicoson tell me some possible manner in which you can jam a case on an attorney here and say, "We want you to be present every day for two or three weeks," with this calendar, when you do it in 10 or 15 days.

I tell you what can be done very easily. Every one of these attorneys here, I believe, can be here from, we will say, the 7th or 8th day of April on

for three weeks and cross it off our calendar. There isn't a single attorney [40] representing any union here that hasn't a calendar made up ahead for at least three or four weeks to a month. Every one of us can be here. We will take three weeks and cross it off our calendar and say, "That is for the NLRB." On 10 days' notice what are we going to do with the cases pending in court during that time?

I personally have my own problems. Mr. Garrett has his. Undoubtedly Mr. Collins has his. But no lawyer is going to be able to sit here for two or three weeks, unless you give him 30 days and let him cross the dates off his calendar. What harm will that do? Talk about a week's continuance or 30 days' continuance. I have seen these things go on so long I have gotten grey haired from it. From April 7th, speaking for myself, I would be available. Mr. Garrett says that is agreeable to him.

Mr. Schullman, does that fit your calendar?

Mr. Schullman: Yes.

Mr. Stevenson: Mr. Collins?

Mr. Collins: Yes.

Mr. Stevenson: We will take the three weeks and cross it off our calendar. [41]

Trial Examiner Kent: How many of you gentlemen filed a motion or requested a continuance from the Regional Director prior to the opening of this hearing?

Mr. Collins: Mr. Examiner, the rest of them have never filed one. I was the only one that did. I had no knowledge at all of it myself. My people

are in Washington, D. C., some of them, and some in Hawaii. I called Mr. Meacham and asked for a continuance, and he told me that I would have to make a showing the same as I would in court, to prepare and file a written motion, which I have done. I think Mr. Nicoson was agreeable to the 18th until some representative of the CIO asked him not to do it. I think we are entitled to some reasonableness about this thing, and I haven't had an opportunity to sit down with my client and even read the complaint, even the original one. We haven't even had a chance to confer with our clients.

Trial Examiner Kent: I assume for some of these people two days would be short notice.

Mr. Collins: My people have not even been served yet, some of them. Marion Jenks is in Hawaii. She has all of her money tied up in this concern and she is working in Hawaii as a stenographer. She is entitled to be represented here and have her day in court.

Mr. Garrett: I am going to say that I do think in regard to my clients maybe they haven't even received the notice. I assume that the Carpenters may have one. [42]

Trial Examiner Kent: Oh, no, I am quite sure your clients had more than two days. Mr. Nicoson stated for the record and showed the affidavits of service, showed that there were two——

Mr. Garrett: My claim is I ought to have three weeks to prepare my case. I have not been privy to any of that. I don't even know just who represents who at the time they hire me to go into this

for them. I know that there is a charge made against the A. F. of L. Union that I represent, and I had less than six days to do all the work of preparing. I never had anything to do with all the negotiations that apparently went on between the Metal Trades Council and the rest of the local unions and the company. There may be talk about several things, and I don't have any proof of those negotiations and don't know what was going on, didn't know there was a contract, hadn't had an opportunity to read the contract, didn't know the facts in regard to it, and the fact of the matter is I didn't know the CIO had been served here and didn't know about the election. The representatives of two of my clients just came in this morning to me, and I am in here now because we got a wire from San Francisco yesterday, and my people haven't even put an answer in the case. They were only served the 25th. This is a case which looks to me like it is going to be one which will start, this trial is going to take a long, long time. The reason it will take a [43] long time is because there are going to be a lot of charges and counter charges thrown around and there is going to be a lot of newspaper publicity. There isn't a lawyer in this room, in my opinion, on the A. F. of L. side that could properly prepare his case without three weeks of steady work on it, keeping at it day after day. I don't think it can be done, and I want to call your Honor's attention to the fact that it is not so much the question of what——

Trial Examiner Kent: Why do you say that? Did you spend any time preparing for this hearing?

Mr. Stevenson: I came over here once last week with the second amended complaint, which had been handed to me the day before. Mr. Examiner, I don't think all the attorneys—now, this is not anything serious, this delay of this period is not serious. All the attorneys will take the Monday after April 7th. The reason we set that date is because during the week ahead, April 1st to April 7th, I have to leave here for Seattle and be in court there from the 1st to the 7th, at a conference in Seattle at which all of the unions have to be present, all of the Teamsters, and Monday after April 7th we will just cross off our calendar enough time to go straight through this hearing. It seems that that will take care of the engagements which we have, and Mr. Collins then would be ready to go ahead the same as Mr. Schullman can be, and it will allow us some time for preparation in the meantime. [44]

Mr. Garrett: Furthermore I believe one attorney connected with the one organization that was in here originally, representing the A. F. of L. Council concerned who conferred with the Board's counsel is not here. There is where we could get our help. There is where you have a man who has some familiarity with the situation.

Trial Examiner Kent: What do you mean, where is he?

Mr. Garrett: I talked with him myself last week. He was not able to be here for this case.

Trial Examiner Kent: He is still generally representing the Metal Trades Council, isn't he?

Mr. Garrett: I suppose he is.

Trial Examiner Kent: You don't know? Now I am just asking that question for my information.

Mr. Garrett: I suppose he is.

Trial Examiner Kent: If you can't get him, the affiliated A. F. of L. Unions will be in default, if we have to dispense with him, in view of his official position?

Mr. Garrett: No, they are not. The Metal Trades Council is not a party. There is nothing to compel him. But he represented the Building Trades Council. We can't compel him to come.

Mr. Nicoson: Your Honor, may I be heard about that?

Trial Examiner Kent: Yes, surely.

Mr. Nicoson: Just to get my name in the record around [45] here. The first complain did allege a contract with the Los Angeles Metal Trades Council, but after we had obtained a copy of the contract, and the contract in the course of the hearing I am sure will be introduced in evidence and I am sure that the parties to the contract will not disagree with me in this statement, that the contract itself makes no reference to the Los Angeles Metal Trades Council. It makes reference only to the individual locals who have been joined here in the second amended complaint and who are signatories to the contract. After that contract the Los Angeles Metal Trades Council did not appear, either as an overall representative or in any other capac-

ity, and the contract does not purport even on its face to be with the Los Angeles Metal Trades Council. Therefore, when we found this out, we amended the complaint and therefore the Los Angeles Metal Trades Council is joined with the individual unions party to the contract. In my opinion the Los Angeles Metal Trades Council has no business here, unless it comes in on behalf of the individual unions that are parties to the contract. Certainly the Los Angeles Trades is not a party to the contract and could not be properly so joined, and that is the reason it was dropped. Now we are back here to where we have certain unions, each one of which was a party to the contract, or which we are at least asking to join in this proceeding. [46]

Mr. Stevenson: April 7th is satisfactory to everybody.

Mr. Tyre: Now, Mr. Chairman, are you interested in hearing from the charging union on this thing?

Trial Examiner Kent: Yes, I am interested.

Mr. Tyre: We have a bit of interest in this case and I think our interest in the case ought to bear considerable weight with the Examiner, despite the voluminous talk, and there are a few matters of which we would like to inform the Examiner.

First of all, last October, and we are prepared to prove this if necessary, representatives from the Mounters Union, and other representatives from the Stove Moulders Union, another representative from the Teamsters' Union, another representative

from the International Association of Machinists and another representative from the Carpenters' Union had their meetings with the company for the purpose of working out an election at the company involved in this proceeding. It was agreed among all of those representatives that instead of putting each of them on the ballot they would go on the ballot as the Metal Trades Council, merely for the purposes of having a single A. F. of L. Union on the ballot. Actually the interested parties at that time and at all times since then have been each of the unions which are now represented individually by counsel. Therefore when the complaint was served upon the Metal Trades Council, it was not served upon [47] the Council as a separate entity, but as a representative of all of these separate organizations. If those unions did not contact that Council immediately upon being informed of the proceeding, I don't think the CIO should be prejudiced by that. As far as the time element is concerned, since the complaint was issued they have had adequate time to prepare a defense. Let us point out to the Examiner that in this state counsel is permitted five days in which to appear and answer and for oral argument on an injunction proceeding. Mr. Stevenson has stated that he has two important matters in San Diego and in Santa Ana, on injunction matters. The injunction, I presume, is against a strike. There can be nothing more important, as a rule, than an injunction against a strike, and yet in those cases the State of California only permits five days to answer and

to appear and argue orally against the injunction proceeding.

Mr. Stevenson: Pardon me. That is not a correct statement of the law. I have found this, representing the unions in injunction matters——

Mr. Garrett: I am surprised by that statement.

Mr. Tyre: The time to appear is five days. Under certain circumstances if counsel within five days ask a reasonable continuance, that is on occasions granted, but not outside of one week.

Mr. Stevenson: That is not correct. [48]

Mr. Tyre: If I may continue my statement without being interrupted, Mr. Examiner, it so happens it is of the utmost importance that this matter be preceded with so as to be out of the way. It has been stated here that the CIO was consulted before the date was set for the hearing. May I state to you at this time that I was not advised when this matter was going to be set, in fact, the first time that I heard it was when the Steelworkers advised me that they had received a notice of hearing, and I was not consulted at any time regarding the setting of this hearing prior to the time that notice was served upon the union. It so happens that in this case, Mr. Examiner, these unions which are now present, notwithstanding the fact they were not at any time certified as collective bargaining agents, have now made contracts which were prepared during the past few weeks with the companies herein involved. Pursuant to that contract a notice has been posted on the board under which employees who do not become members of these A. F. of L.

Unions are to be discharged. Apparently that has not yet been carried out, but it is threatened to be carried out probably within the next week or two, and therefore time is of the utmost essence. We do not have here, incidentally, any cases, at least not in this proceeding, of individual discharge cases where we have to go into the entire background of the individuals and what not. We have here simply a case of the [49] company assisting and otherwise engaging in support of labor unions and entering into a collective bargaining contract. We do not have a case of a single individual discharge involved.

Trial Examiner Kent: You have mentioned an election. Was an election held?

Mr. Nicoson: Yes.

Trial Examiner Kent: Was that pursuant to a formal hearing or a consent election?

Mr. Nicoson: A consent election.

Mr. Tyre: A consent election between the parties here present.

Mr. Collins: No, there has never been an election held at any time. However, the Pioneer Electric Company and my clients are willing to have a consent election held there, most willing.

Mr. Nicoson: I don't agree with that statement. We are prepared to prove to the contrary and we will before this hearing it over.

Mr. Tyre: The point is, this is not an ordinary matter that can go over until April 7th. It is very important to have this matter decided and out of

the way, and I am asking at this time that there be no continuance.

Mr. Collins: If counsel's statement is to be taken as true, that we are going to fire a lot of people according to [50] our contract out there, there would certainly be a complaint filed before this tribunal for discharge for unfair labor practices.

Mr. Stevenson: If that is the only reason we are not going to get a continuance, we can readily stipulate, each of the unions concerned, that there will be no attempt to enforce the terms of that contract with respect to discharge. I think everybody understands and everybody knows there has been nothing done of that sort and we are not looking for an opportunity to take any undue advantage. We want a chance to prepare it, and that it all.

Mr. Tyre: There is one other point I neglected to call your Honor's attention to, which is quite important. Two of our witnesses and two of the very important witnesses who will appear for the charging union must be out of town also on important matters, commencing the latter part of this month almost to the beginning of May, and I say that if they have to be out of town and the hearing is to go on at that time, they will have to be substituted or they will just have to remain. It is just impossible in a matter like this, where there are so many counsel involved and so many parties, to have hearings to meet everybody's convenience, any given date. This date has been set. It is important to have it out of the way. We think time is definitely of the essence. These people have had advance

notice, at least two weeks, and there [51] ought to be no dilatory delay. The trial of this case ought to proceed at this time.

Trial Examiner Kent: When will your witnesses be back?

Mr. Tyre: That is unimportant, when they will be back.

Mr. Schullman: It is pretty apparent that this is getting to be a discussion of the merits rather than a ruling on a formal motion. We can't answer on the merits without having a hearing. I know of cases involving unfair labor practices which were carried forward for long periods of time, when some matters were involved in them which were perhaps making more unrest than in this case, so their insistence on an immediate hearing seems to me unusual. However, I think that the time that has been requested is a reasonable time. I think if the case went over—what the Examiner wants to hear is the facts. These are just statements made by attorneys. The Board counsel is not a witness, neither am I, and I think that when the facts are adduced—I don't even know whether my client is guilty or not, I don't know anything about it, but I say this, it is still true of an NLRB case that it more important to get the facts in properly than it is to have it move speedily, because we are not going to take advantage of that momentary advantage. I think that the request which is made is a reasonable request. I think the time element there is short enough to allow all of us to be prepared to go ahead and conclude the matter [52] finally, and

I again reiterate, the request of the union is that the case be set for April the 7th.

Mr. Garrett: May I make just this one suggestion, then I won't have any more to say. I think the Labor Board should not adopt a policy of forcing litigants to trial before they have time to prepare. I would suggest that it is not the hearing in this case that determines the rights of the parties, it is the order of the Board. I had occasion to talk with Mr. Nicoson only last week about a very similar C case, the Allied Plastics case, which was heard here between the end of March and the first day of May, 1945. The intermediate report was issued about the first of August, 1945, and there is no order made by the Board in that case yet. The Board has not even set oral arguments in Washington yet. It is silly to say that we ought to be brought to trial within a week in order to determine a matter, when everyone knows the trial is not what determines it and everyone knows that the final order of the Board in this case will not come down for many, many months, if this case follows the usual course of cases in the handling to the order. Cases have to be deferred for handling, under the present exigency which we know exists in Washington.

Trial Examiner Kent: Well, of course, what primarily disturbs me, looking at this matter realistically, you gentlemen are familiar with our procedure; why didn't you take some [53] action in the last week before this think was set for hearing for a continuance and raise your grounds.

Mr. Stevenson: I didn't even know that I represented these people myself, as a practical matter.

Trial Examiner Kent: You knew you would. Your client certainly had knowledge.

Mr. Stevenson: No, the first that I ever heard that I was actually going to be in this case was this morning. I am retained by the Carpenters, but they did not notify me of the hearing at any time before that. Apparently they thought the matter was being handled by the Metal Trades. I haven't got any authority from the Carpenters yet. I made an appearance here for them because I am on a regular retainer from them, and when I see that they are not represented, if I find out or if they tell me, if they give me the complaint.

Mr. Nicoson: Well, your Honor, I would not agree to postpone the case to April 7th. I would certainly object to a postponement beyond one week from now.

Mr. Stevenson: It is absolutely impossible for us to get ready in that length of time. Could not be done, as far as I am concerned, it just could not be done. I have cases set in the Superior Court. There is no way in the world I can be in two places at once, and I believe that the Board ought to set——

Trial Examiner Kent: When is your case set?

Mr. Stevenson: I have one in San Diego, I have to go down to San Diego now, and I have to go down to Santa Ana for the first time on Friday. It is an injunction matter. There is a preliminary injunction issued, and I have to go down there and

get a continuance of a few days, and I would have to go down there again when the case is set, to Santa Ana again. It just is not reasonable to expect all of these attorneys to drop their whole calendars and sit in here for two or three weeks without any notice. If the matter is set for the Monday after April 7th, every one of these men can see that they will be here, they can clear their calendars. That is sensible and logical.

Trial Examiner Kent: In view of the number of parties, as I see it, I do not see that it is possible to agree upon any date that would be mutually responsive to all of you. I think Mr. Nicoson's suggestion is sufficient. He simply stated he would object to any continuance over a week. I think that is very liberal. If this is postponed definitely until a week from today, I think you gentlemen will have ample time to prepare and make some arrangement to proceed. I would say to you if you are on another matter, you won't be foreclosed from cross examining witnesses, if you have to be out, if you have any testimony that you have missed, you will be given an opportunity to cross examine. I will bring the witness back, have the witness brought back and you can [55] cross examine later.

Mr. Stevenson: Your Honor, this injunction case in Santa Ana there on the merits will take a week or maybe ten days. It is on an injunction which is already issued, a preliminary injunction at Santa Ana, and you have an idea what the length of time will be. It is just impossible to be here.

Trial Examiner Kent: Let's be a little fair. The

government is merely trying to get the facts and all the facts. A number of you gentlemen represent the same union, your interests are substantially the same. You could either, I think, rely upon one of your fellow counsel representing an A. F. of L. Union, or get some other counsel from your office, if you find that you can't be here any of the time during the injunction matter. Maybe it won't come off as scheduled. That may go over.

Mr. Stevenson: No, there is no chance. It is set in the Superior Court.

Trial Examiner Kent: I will adjourn it for one week, and I think that you gentlemen then can make some arrangements to——

Mr. Schullman: Mr. Examiner, may I state on behalf of my client I will be forced to move—to take it up with the NLRB in Washington, not necessarily only locally, but I will move formally in writing, because my calendar will not permit me to be here. I have another matter scheduled for [56] March 14th, one that has been set for the trial and I am prepared to give up all other demands. I do not think it is doing equity, in view of the facts that have been explained to you, to grant a week's adjournment and expect a frank, full and complete preparation of a case of this nature. I don't think, especially in view of the Examiner's remarks that it is proper to expect attorneys to prepare in this short a time. For instance, I know nothing whatsoever about the clients or the circumstances or the facts, or Mr. Garret or Mr. Stevenson know nothing

yet about our clients' situation in this. I do feel very definitely we ought to get the facts right from our clients, to speak with our clients. We cannot be prepared on a matter that involves the NLRB in a case of this kind without first permitting me to file an answer and second, giving me an opportunity to adequately prepare the case, unless it is the intention of those who are the charging parties, I don't know if it is their intention but I certainly know that you do not so intend, that we do not be prepared to meet the issues. The Examiner is more interested in getting the truth of the issues than a quick decision. Incidentally, you won't get a quick decision, the Board has to rule, so let us not fool ourselves. Let us not say, "Let's move into this and hurry it up and the Board and everybody else will be quick in their decision." That isn't done in a rush. Instead of getting a record here which [57] might be attacked on the question of the unions' lack of due process, let's solve this case once for all and get the facts before this Examiner and get a decision, so nobody can complain at least on a procedural matter.

Mr. Collins: Mr. Examiner, I would like to point out that when this matter was originally set, I had a call in the office that I represent a party charged with manslaughter. Because the date would have conflicted with the original date set for this hearing, I had to let that matter go, because of this case, primarily. You are interested primarily in having the facts in this case, and if you force us into a trial we are not going to get the facts. We have got to

have a chance to talk to our people and get those before we go to trial. We haven't had an opportunity to do that, and I have not even discussed this case with some of my clients yet.

Trial Examiner Kent: Have you anything further?

Mr. Nicoson: Nothing further, except I would like to have you direct your attention to the fact that there are subpoenas outstanding against Daniel P. O'Keefe, William J. Durant, and I would like your Honor to either issue new subpoenas therefor or order that those subpoenas be continued until the hearing of the case.

Mr. Collins: For your information, we can have a stipulation that I can have either one of the gentlemen on call [58] and in thirty minutes will be able to have them down here.

Trial Examiner Kent: Very well. The record will so show.

Mr. Schullman: I think that we are not being granted an opportunity for defense, merely for the sake of satisfying counsel for the NLRB, who has asked many times in cases in which they were not able to go ahead for time.

Trial Examiner Kent: It seems to me like a misunderstanding. You gentlemen are lawyers, your clients were duly served. Why didn't they get in touch with you? Why do you have to come in at this late stage of the game, the day it is set for hearing, and try to get a continuance? Counsel for the respondent, apparently, was the only one who

did make any attempt to get a continuance, and he contacted Mr. Meacham.

Mr. Schullman: Your Honor, laymen don't always get the significance of these technical things. You are speaking of technical law. My clients were not served with sufficient notice that the hearing was to be had on an amended complaint, where they are for the first time made parties, as I understand it. I would like sometime to check the records of the NLRB, and I would like to know when you set a case earlier than 30 or 60 days after the complaint was made, because it has always been the practice that it can't be set before that.

Trial Examiner Kent: Oh, no, 90 per cent of the cases, [59] I would say 95 per cent of the cases are set for hearing and the hearing proceeds on the day that it is noticed for hearing, which is probably about 15 days, ordinarily. Well, this 90 per cent may be wrong. I would estimate 60 to 75 per cent of our hearings are held within 15 days after the complaint issues.

Mr. Schullman: May I suggest to other counsel that I intend to file a motion for continuance, and unless the Examiner states that he may give me a sufficient time on that, I think we would like to ask that it be ruled upon in Washington, because if that is not ruled upon counsel will be subject to a claim of lack of due process, and under those circumstances you will not have a record here.

Trial Examiner Kent: You can appeal from my ruling.

Mr. Schullman: We are not going to appeal after the decision, we are going to appeal——

Trial Examiner Kent: Oh, no, you can appeal now. I will grant you an adjournment of one week and you can appeal from my ruling to the Board, my ruling now.

Mr. Stevenson: Well, I think this statement is only fair to you, as far as we are concerned. I don't know what Mr. Schullman's position is. Giving a week's continuance will simply throw me into a situation where on the 15th or on the 13th I am starting trial, and it is impossible; so as far as we are concerned if we cannot secure a continuance—I want [60] to put this in the record now, that each of the counsel from the various unions have agreed that they will present themselves here with a clear calendar the first Monday after the 7th, whatever that date happens to be, on Monday morning.

Trial Examiner Kent: That is Monday what?

Mr. Stevenson: The first Monday after the 7th. I think the first comes on——

Mr. Nicoson: It comes on Monday.

Mr. Stevenson: It comes on Monday, and the 7th would be on Saturday. As far as I am concerned, I will be prepared and ready to go with a clear calendar on that date.

Mr. Garrett: That would be the 8th, Mr. Stevenson.

Mr. Stevenson: The 8th, that Monday. Unless we can get a continuance of that length of time, so far as the Teamsters are concerned, we will simply have to withdraw and stand upon our right of due

process and stand upon our right for a continuance to prepare our case.

Mr. Garrett: I will have to say for your information I believe it will require three weeks to prepare the case for my clients, and if I am not granted the time necessary to prepare the case, I very seriously doubt whether my clients will be able to proceed.

Mr. Collins: On behalf of the respondents I want to state they will be prepared to go to trial on April 8th, and I will have an opportunity to check with my clients by [61] registered mail or by telephone and see whether I represent them and find out who I represent, and be able to represent them.

Mr. Schullman: Your Honor I think will admit by that we certainly should have the time in which to prepare. If both litigants are going to be able to come in and present their facts as clearly as possible, the time in which the preparation has to be made is inequitable and unfair to any of us. I certainly can't prepare properly in less time, but on April 8th I will be ready to represent Local 792.

Trial Examiner Kent: Off the record. [62]

Trial Examiner Kent: Which were the two parties on which there were two days' delay on service, Mr. Nicoson?

Mr. Nicoson: The Refrigerator Fitters United Association, Local 508, indicated by the return receipt that they received it on February 25, 1946.

Your Honor, this particular receipt that I now have before me, I will have to check back against

the original filing. But it has been signed by the International Brotherhood, by K. Davenport on the 25th of February.

Mr. Garrett: Do you have the service on the Carpenters there, Mr. Nicoson?

Mr. Nicoson: The return receipt hasn't been sent back yet.

Mr. Collins: Do you have all the respondents' return receipts there, Mr. Nicoson? If not, which ones don't you have?

Mr. Nicoson: For the last one we have none from Marion Jenks, Lewis M. Boyle. Those are the only two that haven't come back as to the second amended complaint and order postponing the hearing.

Mr. Garrett: Do you have anything that indicates service on the Stove Mounters or the Moulders?

Mr. Nicoson: As to the Mounters, they received theirs on the 22nd at San Francisco.

Mr. Garrett: At San Francisco? [63]

Mr. Nicoson: Yes.

Trial Examiner Kent: The Mounters, Moulders and Foundry Workers you appeared for?

Mr. Garrett: That is right. On the Moulders, do you have the return?

Mr. Nicoson: On the 23rd.

Mr. Garrett: That was Saturday following the 22nd, a holiday.

Mr. Nicoson: That is correct.

Mr. Garrett: Who signed for that?

Mr. Nicoson: Hayes.

Mr. Garrett: H-a-y-e-s?

Mr. Nicoson: Yes. Let me correct my statement to Mr. Collins a moment ago. I have one for Marion Jenks signed by H. Norden on the 23rd.

Mr. Collins: Where did you mail it?

Mr. Nicoson: 511 North Muirfield Road, Los Angeles.

Mr. Collins: She is in Honolulu.

Mr. Nicoson: You can't tell it from this.

Mr. Collins: I don't know who Norden is.

Trial Examiner Kent: Then it was the Refrigerator Fitters United Association, Local 508, and what was the other one?

Mr. Nicoson: We think it is the Carpenters.

Mr. Garrett: That fits in with the information they [64] gave me, and my office stamp, too.

Trial Examiner Kent: The majority of the parties all seem to have been served, but according to the copy of the file I have, the Trial Examiner's copy, with the pleadings in, there are no answers. Were any answers filed by any of the parties?

Mr. Nicoson: No answers were filed by anyone.

Trial Examiner Kent: So most of you stand at default. Of course, we don't have any procedure for taking defaults in the matter.

Mr. Collins: I offered to file an answer.

Trial Examiner Kent: I can't understand it. I assume some of you gentlemen have a practice before the Board and are familiar with our procedure. The rules specifically provide under "Extension of Time for Filing," that is, an answer, "Upon his own motion or upon proper cause shown by the

respondent, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed." We just ~~don't~~ seem to have a lot of procedural defects here.

[Corrected on page 80—printed record page 284.]

Mr. Nicoson: Let the record show Mr. Collins has just handed me the respondents' answer, an original and five copies.

Also let the record further show that prior to the hearing he gave me a copy of the answer.

Trial Examiner Kent: Of the what? [65]

Mr. Nicoson: He gave me a copy of the answer. I am content to accept this as proper filing at this time, of the answer.

Trial Examiner Kent: In view of the procedural defects on service, which Mr. Nicoson admits involves two of the parties, we are not in a position to proceed, of course, this morning.

I will treat Mr. Schullman's motion for further time to answer, but I think five days is ample time. I request all parties who are going to file an answer, to file an answer within five days from today with the Regional Director.

Mr. Garrett: We have five days then for our clients, each of us, from today?

Trial Examiner Kent: To file an answer. That is a courtesy. You gentlemen should have taken some steps to remedy these things earlier. Since it hasn't been done and since I indicated that the case would go over a week, I am disposed to permit the answers to be filed with the Regional Director within five days from today.

Mr. Schullman: May I ask especially for two more days? It isn't the time element. I won't be able to get to anything, in any case, until Monday.

Trial Examiner Kent: The hearing will be adjourned, as I indicated before, for a week. If you bring it in the morning of the hearing it will be received then at that time. [66]

Mr. Nicoson: As your Honor has pointed out, we don't default for failing to file an answer, so I will agree to that.

Do you want to fix a date certain?

Trial Examiner Kent: Yes. That will be Tuesday, March 11th, the fifth day. What is the rule here? You don't count the first day?

Mr. Nicoson: That is correct.

Trial Examiner Kent: You start with the second day, and the last day is included in the five days?

Mr. Nicoson: Yes.

Trial Examiner Kent: So the answer should be filed with the Regional Director by the 11th. That will at least get the matter in issue. It should have been in issue by today. But in view of the inability to proceed, I don't suppose we are seriously prejudiced.

I personally am not so sure that the service is defective. Is it the date of mailing that counts, rather than the date of receipt? That may be a matter of local practice again, too.

Mr. Nicoson: I don't think I do agree with you on that. I think the actual receipt of the notice is evidence——

Trial Examiner Kent: I think that would be fair, at any rate. If notice was delayed for eight or nine days now, it certainly would be grossly unfair to expect a man to come through with an answer in one day. [67]

Mr. Nicoson: That is right.

Trial Examiner Kent: That, at least, will give you an opportunity to file an answer.

I think in view of the number of parties—there have been statements made here that the unions were remiss in getting in touch and retaining counsel. I don't see any excuse for that. The Board has been functioning now for a number of years. I certainly think that union representatives ought to know what they are going to do and not get us into a position like we are in this hearing.

Mr. Garrett: We always have that trouble in the AFL. It is to some extent due to the rather complicated organization of the AFL. There is always a superior, there is always a superior council involved in these cases. It may be the Building Trades on the one hand. It may be the Metal Trades on the other. It may be the Printing Trade, on the other. There is always delay in the transmission of information between the local member unions and the councils themselves. There is always controversy about the arrangements.

Trial Examiner Kent: On the other hand, union officials and business representatives, I think, have a little more general knowledge of procedural matters, especially with government bureaus, than a layman would. You know they are not entitled,

if they are remiss, to the same courtesies that an ordinary layman might be. [68]

Mr. Garrett: You have to take what I said into consideration in connection with the fact that this case, that originally the council involved was joined. Then they were dropped out, and of course, that created confusion.

Mr. Tyre: What is the date of the hearing going to be now?

Trial Examiner Kent: That is a week from today. That will be the 12th, Wednesday.

Mr. Nicoson: Isn't that the 13th?

Trial Examiner Kent: Is it? Is today the 6th or 7th?

Mr. Garrett: That will be the 13th.

Trial Examiner Kent: The 13th. That is right; Wednesday. Somebody kindly handed me a calendar and I didn't look at it.

Mr. Tyre: That will be at 10:00 a.m. again?

Trial Examiner Kent: 10:00 a.m., in this hearing room.

Mr. Tyre: Could we have an understanding that copies of these answers shall be concurrently filed with the Board and all the other parties?

Trial Examiner Kent: On the 11th.

Mr. Garrett: With all the other parties? You mean the CIO wants copies?

Mr. Tyre: That is right.

Mr. Garrett: We are not expected to serve our answers on each other, those which are not complainants here, are we? [69]

Mr. Schullman: No. I think we serve on the CIO.

Trial Examiner Kent: Five copies to the Regional Director.

Mr. Garrett: How about service on other parties, your Honor?

Mr. Tyre: The rules provide, I think, for that. The rules don't provide, as a matter of fact, for any answer to be filed by a union. The rules provide for answers to be filed by respondents—referring to respondents as the company, I guess—if time is extended in this hearing, for the purpose of other unions filing answers, I presume that the same rules apply to them that apply to respondents, which means——

Trial Examiner Kent: I think under the circumstances of this case it might be advisable to file on the other unions. The unions here are formally made parties here. Ordinarily the union is treated as a quasi party, but they are formally named as major parties in this complaint.

Mr. Garrett: I am trying to get at the practical problem. If we have to serve five copies on the Board and one copy to the CIO, and then serve copies on all the labor organizations who are not respondents, those answers will probably have to be mimeographed or at least require two or three runs of the typists.

Trial Examiner Kent: The parties may possibly waive that. [70] Do you want a copy of the answer?

Mr. Tyre: I, of course, will have to have one.

Mr. Nicoson: Your Honor, may I point out the rules do not provide for the serving of answers on anyone else except to file them with the Board.

Now, if the parties want to agree beyond the rules and regulations for service upon one another, I have no objection.

Mr. Tyre: Subsection 11, Mr. Nicoson, says, "Immediately upon filing his answer, the respondent shall serve a copy thereof upon each of the other parties."

Mr. Nicoson: The answer.

Mr. Tyre: That is right.

Trial Examiner Kent: That is the way I interpreted the rule. Here the unions are made formal parties in the complaint.

Mr. Nicoson: All right. I withdraw my remarks.

Mr. Garrett: What do you call us, Mr. Trial Examiner, respondents? The Board isn't going to make any order against us.

Mr. Schullman: There are some cases on that. The unions technically aren't respondents. I don't know what else you want to call them.

Mr. Tyre: In that case they aren't entitled to file answers.

Mr. Schullman: We are very willing to withdraw the case against them, and that is the end of our appearance. I think so far as we are concerned, we will waive serving of any papers on us. We will serve a copy on the CIO.

Mr. Garrett: The AFL organizations then will

waive service on each other, but we will all serve the CIO?

Mr. Schullman: Yes.

Mr. Stevenson: Yes.

Mr. Tyre: For the record, the service on the CIO means service on its counsel?

Mr. Schullman: That is right.

Trial Examiner Kent: Yes. I think the rules require that.

Mr. Collins: Let the record show I served the answer of the respondents on the counsel for the CIO.

Mr. Tyre: That is right.

Mr. Garrett: Are we respondents?

Mr. Nicoson: I think I can answer that. Technically they are not respondents. They are referred to simply as parties to the contract.

The complaint seeks no order against the unions in and of themselves, except that goes to the contract which the complaint alleges is illegal and should be set aside. Under the ordinary rules of the Board, and procedure, the unions, parties to the contract, are not referred to as respondents, in that no order ever issues against them except to invalidate their contract. Now, if they want to call themselves respondents, [72] why, I am agreeable. If they want to call themselves parties to the contract, I am agreeable to that.

Trial Examiner Kent: Well, I think they are formal parties to the cause.

Mr. Nicoson: They are formal parties, certainly.

Trial Examiner Kent: I imagine they were made parties in view of the consolidated Edison case?

Mr. Nicoson: That is right. I had that in mind, your Honor.

Trial Examiner Kent: I assumed when I read the first complaint and saw them formally joined as parties that that was probably one of the respondents, at least.

Gentlemen, I think the five days will give counsel an opportunity to confer with one another. I do think it will be time-saving, and I think counsel's statements were made in good faith that some were retained very recently. For that reason they weren't able to consult with fellow counsel.

I think, in view of the number of parties, it will be time-saving to give the gentlemen a few days to get together and decide which part of the case you may want to meet.

(Whereupon, at 12:45 o'clock p.m., March 6, 1946, the hearing was adjourned to Wednesday, March 13, 1946 at 10:00 o'clock a.m.) [73]

Wednesday, March 13, 1946

10:20 o'Clock A.M.

Trial Examiner Kent: Are all parties and counsel present?

Mr. Schullman: Mr. Stevenson is speaking on long distance.

Trial Examiner Kent: Who?

Mr. Schullman: John Stevenson, representing the Teamsters.

Trial Examiner Kent: Where is he?

Mr. Schullman: In the outer office.

Trial Examiner Kent: On the phone?

Mr. Schullman: Yes.

Trial Examiner Kent: We might wait then until Mr. Stevenson gets through.

(A short recess.)

Trial Examiner Kent: We will proceed.

Prior to formally beginning to take testimony there are a couple of corrections I wish to make in the transcript.

Page 42, the second line. It reads as follows:

“Trial Examiner Kent: How many of you gentlemen filed a motion in the record prior to the opening of this hearing?”

What I intended to say was, “How many of you gentlemen filed a motion or requested a continuance from the Regional Director prior to the opening of the hearing.” [78]

Mr. Collins: I did.

Trial Examiner Kent: I think I did mention the Regional Director's name. I may have talked a little thick and possibly the reporter didn't get it. On the other hand, it may have been my error. I realize generally reporters are right.

On Page 62——

Mr. Schullman: I don't have that many pages 62 of what?

Trial Examiner Kent: 62 of the first day's transcript. I will let you gentlemen examine that.

Mr. Schullman: Pardon me. I was wondering what you were referring to. All right.

Trial Examiner Kent: I refer to the remark of the Trial Examiner of "Off the record," and that is all. As a matter of fact, there wasn't any off-the-record discussion. What transpired at that time was that we took a short recess to enable me to read the amended complaint and any pleadings that may have been filed in the case. Theretofor I hadn't had any opportunity to read the amended complaint. I think that will explain that there wasn't any off-the-record discussion at that time, other than the general conference that counsel might have indulged in, that the Trial Examiner did not participate in.

On Page 65, the seventh line from the bottom, it reads: [79]

"We just don't seem to have a lot of procedural defects here."

I think the "don't" is erroneous. It should read:

"We just seem to have a lot of procedural defects here."

Before those changes are made, I will permit counsel to see that, if they haven't a copy.

Mr. Schullman: We have no objection.

Mr. Stevenson: No objection.

Trial Examiner Kent: Very well. The changes will be made as suggested.

By the way, I noted there was no appearance on behalf of Refrigerator Fitters United Association, Local 508, affiliated with the American Federation of Labor, one of the alleged parties to the contract. Is there anybody here representing the Refrigerator Fitters, and if so, do they want to participate?

Mr. Garrett: We will communicate with them later on and see what they desire to do.

Mr. Schullman: You will appear for them until that time? I think Mr. Garrett will especially appear for them and limitedly until he communicates.

Mr. Garrett: That is correct.

Trial Examiner Kent: Yes. That is all I have. You may proceed, Mr. Nicoson.

Mr. Collins: May I be heard on a motion before we proceed? [80]

Trial Examiner Kent: Yes, surely.

Mr. Collins: I wish to move the court at this time for a continuance on behalf of all respondents on the grounds heretofore stated, I haven't had an opportunity to confer with my clients. I would like to have the continuance for at least a period of 30 days.

Mr. Garrett: On behalf of the Carpenters, Moulders and the Stove Mounters, I move for a continuance of at least 30 days on the ground they have not had adequate notice of these proceedings.

Trial Examiner Kent: What is that?

Mr. Garrett: On the ground they have not had adequate notice of these proceedings, nor time to prepare their necessary part in this case. And upon the ground that denial to them of adequate notice and adequate time to prepare constitutes, insofar as those unions are concerned, a denial of due process and an unwarrantable interference with the obligations of their contract here involved.

Mr. Nicoson: These are essentially the motions made last week. I will take the same position. I am opposed to any postponement.

Trial Examiner Kent: Yes. In substance, they are the same motions, and, in effect, were denied.

I also stated at that time that, in substance, you all [81] have an adequate opportunity to prepare your defense. I will entertain a motion for a short continuance after the Board rests its case, to give the parties an opportunity for further preparation if they deem it necessary to make a showing at that time.

Mr. Collins: Mr. Trial Examiner, I want my motion to clearly indicate that some of my respondents have not been served. I said the respondents heretofore stated. I want the record here to show that now.

Trial Examiner Kent: There were two you mentioned, one lady——

Mr. Collins: I do not know which ones have not been served. I know the one in Hawaii has not been served. I have been unable to communicate with her. I don't think any of them have been actually served. I believe some of them, with the exception of Mr. Durant, some of the rest of them had various employees sign for them on this registered mail. I am not raising that as to Mr. O'Keefe particularly; we will accept that.

Trial Examiner Kent: I will hold the ruling in abeyance as to that part of the motion, until Mr. Nicoson makes a proof of service.

Mr. Schullman: Just a second.

Mr. Collins: I wish to also make the statement, for the purpose of the record, that these respondents that I represent [82] are named separately in this first amended charge and in the complaint. There has been no motion made to separate these respondents or eliminate those that are not served, from the proceeding. I believe it is a violation of their constitutional rights. I want the record to clearly state it at this time.

Mr. Schullman: Your Honor, I don't know if I can—I am not arguing for the respondents, but from a simple, pure elementary principle of law, the thing that appeals to me is this: From what I understand, respondents are named in the action. Therefore, they are necessary parties to the action.

I agree that if they had been served and failed to appear and failed to have representation, this court would be, and the Board would be entitled to proceed. One of the inhibitions against even the N.L.R.B.—the N.L.R.B. has its rules of procedure. One of the inhibitions, constitutionally, is that you may not proceed against a named respondent or party where they haven't been served, until service is effected, until brought before the form of the court.

I am not making this statement for my clients, but as an attorney and the other counsel. I think we must call it to the attention of the court, as a constitutional question.

Trial Examiner Kent: Have you any answer to make, Mr. Nicoson?

Mr. Nicoson: I feel the service is adequate, and,

as the [83] complaint indicates and we intend to prove, the parties here named as individuals are, in fact, partners to the Pioneer Electric Company. There wouldn't be any question in my mind as to the adequacy of service upon Pioneer Electric Company. If we are right in our contention and theory, in the complaint, an order issued, directed against the Pioneer Electric Company certainly would be effective, even though one of the partners may not have been properly served. After all, the partnership is here. I don't think there is even a question raised at the moment that the partnership is not properly before the Board at this time.

Trial Examiner Kent: Your contention, in effect, is, assuming there was a failure to serve one of the individual parties, it would only go to the individual right of that person, assuming that there might be a violation of that right.

Mr. Nicoson: I think that is correct, your Honor. In the event the Board, if we make out our case and the issues, if there is not proper service or one or more of the parties individually are not properly before us, the Board, in that event, could not make a valid order, in my judgment, against the absent party. The Board is not precluded in making the valid order against the Pioneer Electric Company, the partnership which is before the Board.

Mr. Schullman: Do you want me to academically pursue [84] that? I think that is an erroneous legal proposition. You see, a partnership is a fic-

tion. It exists only through the entity of the individual partners. For instance, you effectuate an order upon individuals in a partnership. In a corporation, that is a legal entity, you effectuate an order against a corporation. I can't see it legally.

Counsel admits you couldn't make a decision against them, the Board could not make a valid order against them.

Trial Examiner Kent: Against the individual.

Mr. Schullman: You can't separate them, because they haven't been served, because they might contribute evidence which will help, although they are partners, all joined together. I think you have a constitutional inhibition here, and I am merely drawing it out. Let the Board decide what it wants on it. It is a serious defect, in my personal estimation.

Trial Examiner Kent: I will deny the motion at this time, without prejudice to later renewing it.

Mr. Garrett: May it be understood that the motion for continuance of my clients will also rest upon the same grounds and the same showing as made by them in the initial hearing one week ago today?

Trial Examiner Kent: I thought you raised the other day the showing that one of your clients was the Carpenters. Mr. Nicoson seemed to concede there might be a question as to [85] whether the Carpenters did not have a full ten-days' notice. About eight days had elapsed, I believe, at the time of the last hearing.

One of the reasons, of course, of my granting a continuance was to give that party full ten days. So, I think having had it now, I will deny that motion.

Mr. Garrett: Thank you. [86]

Mr. Collins: Mr. Trial Examiner, I want the record to show that I am now appearing on behalf of those respondents who have been properly served. The answer filed by me in their absence, and without consultation of them, is for the benefit of those that have been properly served.

I wish to remove all my legal rights to object to any of these proceedings, either before this Board or later on before the court.

Trial Examiner Kent: I think I will ask you, Mr. Collins, to go a little further and state for the record just whom you are formally appearing for and whom the objection goes to.

Mr. Collins: Will Mr. Nicoson read into the record then the respondents he has served and what the method of service is?

Mr. Nicoson: Your Honor, it appeals to me it is more proper before all this question of propriety of service and so forth that I, at least, offer for the record Board's Exhibit 1, which contains all the proof of service and so forth, the formal papers, and then whatever objections they have to make to the service can be made. It seems to me if there is a defect it can be pointed out and we don't have to be going around the barn here.

Trial Examiner Kent: I wonder further, Mr.

Collins, if you shouldn't have appeared especially—

Mr. Collins: I don't see how I can.

Trial Examiner Kent: ——to object to service in respect to those clients you purportedly represent, whom you claim now were not properly served.

Mr. Collins: In view of the statements of the Board's attorney, Mr. Nicoson, and in view of the proceedings here, I feel I have to stay in the case and protect the rights of these people, because this Board will go ahead and make orders whether there is legal justification for it or not. I wish to protect them as best I may. However, I wish to reserve my right to object to the jurisdiction of this Board upon the grounds you do not have proper service. I don't want to waive my rights as to service to anyone.

I have not had a chance to confer with these people and to properly prepare this case. We are forced into this too rapidly. I don't see where it is incumbent upon me to state those I do represent and those I do not, other than to say I will represent all those that have been properly served.

Trial Examiner Kent: Well, I think it may lead to more orderly procedure to have Mr. Nicoson formally introduce the pleadings and his proof of service.

Mr. Collins: I wish to make an oral motion at this time to amend my answer so it clearly indicates that I appear only for those who have been properly served, properly and legally served, in ac-

cordance with the rules of service [88] in the State of California and the federal courts.

Mr. Nicoson: I object and I oppose such a motion on the ground it is indefinite and uncertain; it adds nothing to nor takes anything from the answer.

Trial Examiner Kent: I wonder if your motion is timely. I will deny the motion, as I stated before, without prejudice, at this time, subject to it being later renewed.

You may proceed.

Mr. Nicoson: I now offer for the record and ask to have marked for identification as Board's Exhibit 1, with the subdivisions appropriately alphabetized as follows:

Board's Exhibit 1-A, the original charge filed in this matter on the 6th day of February, 1946, by the United Steelworkers, Stove Division 1981;

Board's Exhibit 1-B, the original complaint, consisting of six pages, signed by Regional Director Meacham, on February 14, 1946;

As Board's Exhibit 1-C, the original of the notice of hearing setting the hearing for February 27, 1946, and issued by Regional Director Meacham on February 14, 1946;

As Board's Exhibit 1-D, an affidavit by an employee of the National Labor Relations Board of service by registered mail, dated February 14, 1946, of the notice of hearing, complaint and charge on O'Keefe & Merritt Manufacturing Company, 3700 East Olympic Boulevard, Los Angeles, California; [89] Pioneer Electric Company, 3700 East

Olympic Boulevard, Los Angeles, California; L. G. Mitchell, 1117 Story Place, Alhambra, California; W. J. O'Keefe, 845 South Kensington, Los Angeles, California; Marion Jenks, 511 North Muirfield Road, Los Angeles, California; Lewis M. Boyle, Ojai, California; Robert J. Merritt, 111 North Las Palmas Avenue, Los Angeles; Robert J. Merritt, Jr., at the same address; William J. Durant, 1245 Wentworth, Pasadena, California; United Steelworkers of America, Stove Division, Local 1981, at 4110 East Slauson Avenue, Los Angeles, California; Stove Mounters International Union of America, affiliated with the American Federation of Labor, in care of John D. Roberts, 38 Athen Street, San Francisco, California; Los Angeles Metal Trades Council, 405 South Hill Street, Los Angeles, California;

As Board's Exhibit 1-E, four sheets marked E-1 through E-4, to which are attached United States Post Office return receipts further attesting to service of the complaint, notice of hearing and charge upon the aforementioned persons and company and union;

As Board's Exhibit 1-F, amended complaint, consisting of seven sheets;

As Board's Exhibit 1-G, an affidavit of an employee of the National Labor Relations Board of service by registered mail of the amended complaint, dated February 18, 1946, upon O'Keefe & Merritt, address heretofore given; Pioneer Electric Company, [90] at the address heretofore given; L. G. Mitchell, at the address heretofore given; W. J.

O'Keefe, at the address heretofore given; Marion Jenks, at the address heretofore given; Lewis M. Boyle, at the address heretofore given; Robert J. Merritt, at the address heretofore given; Robert J. Merritt, Jr., at the address heretofore given; William J. Durant, at the address heretofore given;

As Board's Exhibit 1-H, a document consisting of four sheets, marked H-1 through -4, being sheets of paper to which are attached United States Post Office return receipts further attesting to service of amended complaint on persons, companies just mentioned;

As Board's Exhibit 1-I, the first amended charge filed on February 21, 1946, by the United Steelworkers of America, Stove Division 1981, a document consisting of two pages;

As Board's Exhibit 1-J, the second amended complaint, a document consisting of eight pages, and issued by the Regional Director on February 20, 1946;

As Board's Exhibit 1-K, the original of the notice of hearing setting the hearing for March 6th at 10:00 o'clock in the hearing room in this building, signed and issued by the Regional Director February 20, 1946, a document consisting of two pages;

As Board's Exhibit 1-L, an affidavit of an employee of the National Labor Relations Board of service by registered [91] mail of the notice of hearing, amended charge, second amended complaint. The affidavit is dated February 21, 1946,

and a document which shows service upon International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with the American Federation of Labor, 2640 South Hill Street, Los Angeles, California; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with the American Federation of Labor, 405 South Hill Street, Los Angeles, California; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists, 123 West 18th Street, Los Angeles, California; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor, 1748 Santee, Los Angeles, California; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor, 511 South Maple Street, Los Angeles, California; Refrigerator Fitters United Association, Local 508, affiliated with the American Federation of Labor, 1417 Georgia Street, Los Angeles, California;

As Board's Exhibit 1-M, a sheet of paper to which is attached United States Post Office return receipts further attesting to the service of the amended charge, second amended complaint and notice of hearing upon the unions laterally mentioned; [92]

As Board's Exhibit 1-N, the original of the order postponing the hearing from February 27, 1946, to March 6, 1946, signed and issued by Regional Director Meacham, February 20, 1946;

As Board's Exhibit 1-O, an affidavit of service by an employee of the National Labor Relations Board by registered mail of the order postponing the hearing, amended charge and second amended complaint, dated February 21, 1946, a document consisting of two sheets attesting to service upon O'Keefe & Merritt, at the address heretofore given; Pioneer Electric Company, at the address heretofore given; L. G. Mitchell, at the address heretofore given; W. J. O'Keefe, at the address heretofore given; Marion Jenks, at the address heretofore given; Lewis M. Boyle, at the address heretofore given; Robert J. Merritt, at the address heretofore given; Robert J. Merritt, Jr., at the address heretofore given; William J. Durant, at the address heretofore given; United Steelworkers of America, Stove Division 1981, at the address heretofore given; Stove Mounters International Union of America, affiliated with the American Federation of Labor, care John D. Roberts, 38 Athens Street, San Francisco, California;

As Board's Exhibit 1-P, a document consisting of two sheets, numbered P-1 and P-2, containing United States Post Office receipts further attesting to the service of the order [93] of postponing the hearing, amended charge, and second amended complaint upon the persons and unions laterally mentioned;

As Board's Exhibit 1-Q, the answer of respondent O'Keefe & Merritt Manufacturing Company; L. G. Mitchell; W. J. O'Keefe; Marion Jenks; Lewis M. Boyle; Robert J. Merritt; Robert J. Merritt, Jr.; William J. Durant individually and as

co-partners, doing business as Pioneer Electric Company;

As Board's Exhibit 1-R, the answer of the Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, to the second amended complaint;

As Board's Exhibit 1-S, the answer of the International Moulders and Foundry Workers, Local 374, affiliated with the American Federation of Labor, to the second amended complaint;

As Board's Exhibit 1-T, the answer of the Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, to the second amended complaint.

(Thereupon, the documents referred to were marked as Board's Exhibits 1-A through 1-T, for identification.)

Mr. Nicoson: I offer this document for the record and show it to the parties.

Mr. Collins: To which offer on behalf of the respondents I object on the ground it is not what it purports to be, that the service actually is not upon the parties but, in some cases, upon the maid and in other cases the father signed for a daughter, and various other methods of purported [94] service, without going into detail in each case specifically. As far as Marion Jenks is concerned, she has not been served at all. I object to the proceeding continuing without proper service being made on these respondents.

In line with your ruling, Mr. Examiner, that you will entertain a motion for the continuance after the Board's case, I wish to point out to you that would not give these people an opportunity to cross-examine the witnesses as they are brought forth. It is an offer that means nothing to us; absent brother. They don't get a chance to know what is going on.

Trial Examiner Kent: I am very glad to receive a brief of counsel in reference to service on Miss Jenks, and Board's counsel may also have an opportunity to file a brief to support that service.

Mr. Collins: I expect to ask the Trial Examiner for an opportunity to file a written brief at the close of these proceedings, at which time I expect to raise that.

Trial Examiner Kent: Yes. I think it raises rather a novel question. I would be very glad to receive one.

Mr. Garrett: On the exhibit which is Board's Exhibit 1-S, the answer of the Foundry Workers, Local 374, I would like to move a correction by interlineation on page 2, line 22. At page 2, line 22, the Moulders move to substitute the figures "374" for the figures "125." [95]

Mr. Nicoson: No objection.

Trial Examiner Kent: The amendment may so show. I don't suppose you have all the copies present here now. I was going to say you could physically make the change.

Mr. Nicoson: I will state, for the record, all the copies in the Board's possession already have been physically changed. [96]

Trial Examiner Kent: Very well. By the way, Mr. Nicoson, you will note the other day in my order I permitted them to file answers within five days. I suggest I provided that the answer be filed with the Regional Director. My purpose in doing that was to see that the necessary two copies are transmitted to Washington for the files there. I would request that you request the Regional Director to forward them to Washington, Mr. Nicoson, to complete the files.

Mr. Nicoson: I think, your Honor, that has already been done.

Trial Examiner Kent: I thought it probably would be; that was the reason——

Mr. Nicoson: We sort of do that by routine.

Trial Examiner Kent: You people probably do that mechanically, yes. It will obviate the fact I might overlook it. For that reason I thought it was a good idea to have those answers filed with the Regional office.

Mr. Nicoson: If it hasn't been done, it will be.

Trial Examiner Kent: Thank you.

Mr. Schullman: I don't know whether it is proper to intercede now. Since you are speaking of answers, on behalf of Local 792, after a careful analysis of the Act and rules and regulations, I don't think that answers for parties named to the contract that are indicated any place. As a matter of fact, I think the only purpose—I tried to [97] read some of the history behind that—I think the only purpose of naming parties is in an event such as this, where the parties are involved, if and when

you decide to uphold or strike the contract. Since it is not indicated it would be surplusage. When we reach our part of the case we will then, by introduction, state the position of our client.

Trial Examiner Kent: I think counsel is right. It is not mandatory to file answers, having been made formal parties. I interpreted your motion as a request to file an answer the other day. For that reason I entered a general ruling that the parties might, within five days, file answers with the Regional Director. It does help to clarify and define the issues.

Mr. Stevenson: Mr. Examiner, because it is impossible for me to be present at the hearing, I would like to ask the indulgence of the Board and counsel in making a statement of the Teamsters' position and requesting a stipulation, if counsel are willing to give it. And with that, why, we will not be present further in the hearing.

Trial Examiner Kent: Yes, Mr. Stevenson. I suggested the other day in your case there were so many parties here that I could readily see that some emergency might necessitate the absence of one of the counsel. I did offer at that time, if counsel wanted to, if counsel had to be absent himself he would have the privilege of cross-examining any witnesses [98] that had been called, and I would see, for the benefit of counsel, that that witness was called back if counsel wished the opportunity for cross-examination.

Mr. Stevenson: I don't anticipate that will be

necessary in our case. I think the facts with respect to the Teamsters can be obtained by stipulation and then when those are obtained I don't see any necessity of our being here.

Trial Examiner Kent: As I see the case, the case of all the A.F.L. Unions would be based on substantially the same legal grounds.

Mr. Stevenson: There is some difference between the status of the Teamsters. I wonder if it might be possible for me to make a statement and ask if a stipulation can be entered into?

Trial Examiner Kent: I think that might suffice. And you may, Mr. Stevenson.

Mr. Stevenson: On behalf of the Teamsters' local concerned in this matter, the facts are that the drivers, driver helpers have always been members of the Teamsters organization, and that they have at all times been represented by the Teamsters organization.

Up until the first date of this hearing I think that everybody was under the impression they were specifically excluded from the original certification. On examining the original certification we did not find those specific [99] exclusions.

I would like to ask counsel to stipulate that the fact is that the drivers and driver helpers have at all times been represented by the Teamsters organization, and that the Steelworkers have never claimed representation of that particular group, nor have they ever represented that particular group either in the O'Keefe and Merritt operation or in the Pioneer Electric operation.

The further fact that the Teamsters organization signed a contract and that it has always dealt for the Teamsters concerned, that representations were made to us that the Pioneer Electric Company had taken over completely the particular operation or that portion of the O'Keefe and Merritt operation in which the Teamsters worked, and that the new operation was a complete and separate entity from the original O'Keefe and Merritt operation; that upon those representations the Teamsters organization have signed a contract with the Pioneer Electric Company.

I wonder if those facts may be stipulated to by counsel, insofar as the Teamsters are concerned, if they are. We have no knowledge whatever of the remaining facts which this Board will have to determine, which is the matter of the transfer of the O'Keefe and Merritt operation to the Pioneer Electric operation.

Mr. Garrett: We will so stipulate. [100]

Mr. Schullman: Yes.

Mr. Stevenson: Will you stipulate as to those facts, Mr. Nicoson, for the relation of the Teamsters Local?

Mr. Nicoson: I think I can stipulate to most of them, Mr. Stevenson. What representation was made to you about the transfer from O'Keefe and Merritt to Pioneer Electric I certainly can't make any stipulation that those are the facts.

Mr. Stevenson: No, we don't ask that the stipulation assume those are facts. We merely ask that a stipulation be entered into that that situation was

represented to the Teamsters and that they signed a contract. We have no knowledge as to the factual situation behind that; further than the representation that the change had been made.

Mr. Nicoson: So far as your proposed stipulation about the drivers and helpers is concerned, am I to understand that that does not include persons employed, or at the time employed in the so-called warehouse down there, just only the truck drivers and those who come under the common understanding of helpers to truck drivers?

Mr. Stevenson: I believe that the membership included—if I am wrong I would like to be corrected—those in the warehouse who loaded trucks, were actually engaged in the loading of trucks. The drivers and so-called driver helpers who loaded trucks. Just where each of them worked I don't [101] know. But those are the people who have always been in the membership and there has been no dispute on those people between the Steelworkers and the Teamsters organization.

Mr. Tyre: As far as the Steelworkers are concerned, I certainly can't enter into any stipulation at this particular moment. I would want to have the record read back so I will know exactly what the stipulation is. In fact, I prefer to have it written up at the first recess when I can go over it with my client and see how much of it, if any or all, can be stipulated to. I think that is the only orderly way I can enter into it.

Mr. Nicoson: I much prefer to do it that way,

too. I think the matter is perhaps one that can be solved. I think we ought to know exactly what we are stipulating to, if we do reach a stipulation. I think Mr. Tyre is absolutely on the right track when he suggests that we reduce it to writing.

Mr. Stevenson: We might do that. We might try to reduce it to writing. I want to make it clear that I did not intend the stipulation to include any facts as to whether actually the Teamsters were in the original certification or not.

I did say that in the contemplation of all the parties they were never included in the original certification and that we proceeded with representation of those men at all [102] times, and that at no time has there been any dispute about that representation. The actual wording of the certification may or may not bear that out.

We will endeavor to arrive at some sort of a stipulation. I am doing that because I can't see that the Teamsters organization in this particular proceeding would add anything or detract anything to the entire proceeding, and I can't see that we have any evidence that we wish to adduce beyond that.

Mr. Collins: I will accept Mr. Stevenson's stipulation.

I think, before Mr. Stevenson is excused from this hearing, that a matter I intended to bring to the attention of the Board should be discussed at this time. I intend, on behalf of the respondent, Pioneer Electric Company, to show they have been in business ever since 1942 and they have been an

entire and separate legal entity, both in contemplation of the law and in fact. I expect to show they had at one time as many as 108 employees; that they were in business before any certification was had by this Board. They have never had an opportunity to prove to the Board whether or not they signed a contract with the A.F.L., without having adequate proof to them, that is, the Pioneer Electric Company, that the A.F.L. represented a great majority. I have discussed this matter with Mr. Nicoson and some of the A.F.L. groups, and Mr. Conway of the C.I.O., and on behalf of the Pioneer [103] Electric Company, if it would shorten the proceeding any, the Pioneer Electric is willing to consent to a Board conducted election at this time, if there is any doubt as to whether or not the C.I.O. or A.F.L. are in a vast majority there. Before Mr. Stevenson gets out of this proceeding I think he ought to have an opportunity to know about that.

Mr. Stevenson: Well, as far as we are concerned in the proceeding, we are willing to consent to any method of solution arrived at between the parties which will terminate the proceeding. We won't object to an election. We won't interfere with any settlement which is arrived at. We believe that we have to represent our own people, and we intend to continue to do that, and I do not believe that there is any dispute as between us about that representation, either as to any of the A. F. of L. unions or as to the Steelworkers.

Trial Examiner Kent: I think, Mr. Stevenson, in view of Mr. Tyre's statement, that you gentlemen

might try to work out a written stipulation. There seems to be some possibility that you might be able to arrive at a written stipulation, and that might be the best way to dispose of that particular issue.

Mr. Collins: Do I understand from the silence of the parties here that there can be no agreement as to a consent election so far as the Pioneer Electric Company is concerned?

Mr. Schullman: We would agree to it, on behalf of our clients.

Mr. Garrett: I would have to consult my clients.

Mr. Reed: The Machinists would agree to a consent election.

Mr. Schullman: We will agree to it. Incidentally, while we are at it, some time before the Board finishes its presentation, for reasons somewhat different from Mr. Stevenson's, [105] I would like to make a statement. I don't think it is necessary in this stage of the case. I merely ask the right to make a statement as to my position on the record, because I also can't be here. I don't want to be sitting here just awaiting the entire government's case. I don't want to do it now, necessarily, now or later, but I will want to do it. I also feel my client—we cannot add or detract anything to the issues involved. I think when we state our position, if counsel wants a stipulation, it is there, for them to use, and those are the facts. Any time the Examiner desires and Mr. Nicoson consents, I will be glad to state our position factually and legally. We are not withdrawing from the case, but other

demands will take us away from it, so that when we are not here Mr. Garrett can proceed to represent Local 792, and you could call us on any matters which might be prejudiced by our not being here.

Trial Examiner Kent: Yes. I think in view, as I see it, of the substantial identity of the issues, so far as they pertain to the various A. F. of L. parties——

Mr. Schullman: Pardon me. That is just not correct. The issues are not in fact precisely the same, as we view them, which will be very apparent when the Board concludes. I will be very glad to set out our position. There is a complete difference, insofar as the Painters are concerned, a complete difference from anybody else, because they were not part of the [106] original certification. They were not part of the stipulation entering into a consent election. They were concluded by somebody without authority for them, and they, as far as they are concerned, are asking that the decision—I would rather give it chronologically, and I should like to make my statement now, if the Board wants to hear it now. There is a complete differentiation and distinction in them.

Trial Examiner Kent: I see.

Mr. Schullman: Does Mr. Nicoson desire I state it now, then if I do I can leave and not burden the case any further with my presence.

Mr. Nicoson: It just strikes me, since Mr. Schullman has begun now, he ough to continue.

Mr. Schullman: In behalf of the Brotherhood of Painters, Decorators and Paperhangers, Local

792, the facts are as given by me for my clients as follows:

That they did enter into a contract with the Pioneer Electric Company, I believe in February of 1946, or more correctly, I think on February 2, 1946; that at that time and prior thereto they did represent and have as members all of the maintenance painters, consisting of five in number, and that they did have organization for a long period of time; that presently and then there has been no contention as far as we know on the part of the United Steelworkers that they have claimed or did claim or now claim the Painters as within [107] their legally constituted union; that more importantly, in reference to the alleged certification and election, at no time were my clients notified of such a pending election, that they did not participate in such election, that they did not stipulate to a consent election, and that no one whose names appear in the consent election had authority to conclude them as to the unit, and that as a matter of fact insofar as the certification is concerned, it is improper for the unit therein set forth, with particular application to my clients, and that the proper unit for my clients would be limited to the painters therein, and that for that reason, assuming that the Board might find that the contract should be stricken down, that the certification is proper and the contract should be stricken down, that the Painters have a valid and subsisting contract; and that further, at the time of entering into such contract, representations were made to them that the

Pioneer Electric Company is a different entity than the O'Keefe and Merritt Corporation; that Local 792 has no knowledge, information, or belief concerning the rest of the allegations; that they cannot add one iota to the legal issue whether or not in fact or in law O'Keefe and Merritt and Pioneer Electric Company are different entities, which is a matter from the facts which this Board or some other court may decide; that they have no knowledge, information or belief on any of the allegations set forth pertaining to an alleged [108] inducement of our contract; that in view of that we do not withdraw from the case, and when we do leave in person, any matters pertaining to Local 792 can be taken care of by remaining counsel, Mr. Garrett. May we add that we see nothing that we could add to that by way of outside testimony, any testimony which would change the legal issues involved, limited to the question of whether or not there is a change of identity, and I believe that all parties will stipulate that certainly Local 792 was no party to any of the matters alleged to have occurred. [109]

Mr. Tyre: Are you asking for a stipulation on that?

Mr. Schullman: No, I say they should stipulate. I am not asking that, because I do not want to prejudice the government's case if they don't want to stipulate now. I think those facts would appear if we put on a witness when in fact the case of the respondents is reached and the parties will adduce testimony, that the only witnesses that we would

introduce would be those who would testify substantially in the nature of the facts as we have stated in our statement of position.

Trial Examiner Kent: In other words, if you put on witnesses subsequently they would go, to the best of your information—if the C.I.O. contends that the Painters are in the present unit as named in the complaint, you might wish to put on testimony controverting that.

Mr. Schullman: Our testimony very simply would show at that time that the contract was signed under the facts and circumstances alleged and our testimony would show that the five painters belonged to the union before the contract was signed and our testimony would show that at the time of the certification this Local 792 had no knowledge or participation, did not consent to the election, did not participate in the election, and from that we would, of course, argue that as a matter of fact and law, the unit did not conclude us, and the other point would be that we do not know as a matter [110] of law or fact whether O'Keefe and Merritt can be considered the same entities with Pioneer, that representations were made as to the different entity at the time the contract was signed.

Mr. Collins: As a matter of information, may I ask the Trial Examiner, do we have to inquire of Mr. Nicoson, the Board's attorney, or do we also have to secure a stipulation from the attorney for the C.I.O. in these proceedings? I was just wondering what the situation is here when stipulations are to be made. It is the Board's case.

Mr. Nicoson: He didn't ask me, he asked you.

Trial Examiner Kent: Well, I will submit the question to Mr. Nicoson.

Mr. Nicoson: Well, since you are the Trial Examiner here, you have the right to rule on requests, motions and so forth. I certainly do not think I have any right to get in here and try to solve any questions that are put directly to you, because I know the C.I.O. is present here and represented by counsel. As far as arriving at a stipulation, you are the last judge on that, not me.

Mr. Collins: I thought Mr. Tyre, appearing as counsel for the C.I.O., was merely assisting Mr. Nicoson and aiding him in preparation of the Board's case, and I was wondering whether we have to have a stipulation with him, too. Their interest might be opposed to that of the Board. [111]

Trial Examiner Kent: No, the Board primarily represents the public interest, and the Board very often finds that the parties, the C.I.O and A.F.L. Unions might be willing to enter into certain stipulations, and the Board might very well see that such a stipulation should not be entered into. But I think probably in view of Mr. Schullman's statement it might be best to proceed to put the evidence in and see how the unit is defined by the testimony in conjunction with the statement of the unit as set forth in the claim [in pencil: complaint] as I understood it.

If you put testimony in, it might be and probably would be limited to controverting that particular part of the issue, that the painters are not prop-

erly included in the unit alleged in the complaint, and boiled down, that is substantially your contention.

Mr. Schullman: Yes, for the more important reason that they were concluded against participation by those without authority to conclude them. It seems to me we ought to have an answer and even in this instance a ruling on that.

Mr. Nicoson: I would agree to that.

Mr. Schullman: I mean, that is a mere element of the case. We merely state that we entered into a contract in good faith and, of course, we are pleading that O'Keefe and Merritt and the Pioneer Electric are not the same organization, and we can't add anything to that. That is for [112] the Board to determine.

Mr. Nicoson: It seems to me Mr. Schullman and Mr. Stevenson have made their position clear. I would suggest that we go on. I would like to inquire if you have decided to proceed with evidence. If you have, I have got two or three minor amendments I would like to offer.

Trial Examiner Kent: Yes. Very well.

Mr. Stevenson: Mr. Nicoson, would it help us any, or be any great help on this development, I have to be out of here this afternoon; with regard to my request for a stipulation, I am asking a stipulation that these are the facts and I believe they are, and could we stipulate the witnesses for the Teamsters if called, would testify those are the facts and let the record remain in that state?

Mr. Nicoson: I think perhaps I could—let me talk to my colleague. I have this suggestion, your Honor. Let me complete the introduction of the formal papers and such amendments as I would like to offer, and then I will suggest that in the interest of following out Mr. Stevenson's suggestion that the parties get off the record, either in my office or in some other place, and explore the possibilities of such a stipulation. It may be that we could stipulate. It may be that we will be unable to stipulate to anything.

Trial Examiner Kent: Yes, that might be the most advisable course to pursue. [113]

Mr. Nicoson: Since the noon hour is about here, I would like to make that suggestion, if it meets with the approval of the parties.

Mr. Schullman: That is satisfactory.

Mr. Stevenson: Mr. Nicoson, at noon time I have to leave here.

Mr. Nicoson: It is now 11:35. I think within the next 25 minutes we would either know whether we could or we could not.

Mr. Stevenson: I don't think there is going to be any controversy about our position, so I am perfectly willing to accept the suggestion, that if my witnesses were called they would testify to those facts, without you stipulating that those are the facts.

Mr. Nicoson: Of course, it may be that if the witnesses were produced, it might be necessary to cross-examine them. [114]

Mr. Stevenson: That is right.

Mr. Nicoson: If you don't produce the witnesses, we would merely make this stipulation and we would foreclose cross-examination. That is something I think we would have to consider.

Mr. Stevenson: I do not intend to do that, to foreclose your cross-examination.

Mr. Nicoson: In other words, if we should stipulate as you suggested, as far as you and your witnesses are concerned, they probably would not be here unless somebody else called them, and as a matter of fact it seems obvious from your standpoint that there would be no necessity of calling witnesses if the stipulation is that they would testify thus and so, so I do not feel that at the moment I am in a position to preclude myself from the possibility of cross-examining the witnesses. However, I am willing to meet with you and the other counsel to explore the possibilities of reaching some stipulation.

Mr. Schullman: May I make the suggestion that may solve it. I think we could stipulate that if our witnesses were called they would testify what we have related, both as to Mr. Stevenson's union and the Painters, and all other counsel for the unions, and counsel for the government may cross-examine any witness or witnesses that he will please, and we will be glad to bring them in the next one or two or three days, [115] whatever is necessary. That I think would be a type of stipulation which would remedy the entire controversy, in other words, if counsel for the Board wanted the opportunity to cross-examine, as far as the Painters are concerned,

we can call the witnesses that we would utilize, we would give the names to him and tell him that is what we have already said they would testify, and we will bring them in. We don't want to foreclose him of the right of cross-examination.

Mr. Nicoson: As I see, the possibilities of stipulation are not impossible, and since it is drawing close to the noon hour, I suggest that we utilize the next 25 minutes in seeing what we can do. Before we recess, has Board's Exhibit No. 1 been received?

Trial Examiner Kent: I don't know. The record will show. It may be admitted.

(Thereupon, the documents heretofore marked as Board's Exhibits 1-A through 1-T, for identification, were received in evidence.)

Mr. Reed: Mr. Examiner, before we proceed, and while we are on the record, the International Association of Machinists has a correction to offer to the exhibit.

Mr. Nicoson: I was about to make that amendment.

Mr. Reed: The second amendment to the complaint, to show that the proper indication of the Machinists as a party [116] or as an interested party should read, in the box, the case number, as District Lodge 94 instead of District Lodge 96.

Mr. Nicoson: That was one of the amendments that I had in mind, your Honor, and I hereby move to amend the second amended complaint by interlineation to substitute No. 94 for No. 96, wherever the name of the International Machinists is mentioned throughout the complaint.

Trial Examiner Kent: I think that would take care of your motion, Mr. Reed.

Mr. Nicoson: I would like also to move with reference to the Moulders that the local number be changed from 376 to 374, wherever it appears in the complaint.

Now, I notice—maybe though you had better rule on this first.

Trial Examiner Kent: The complaint and all other documents in the file as part of the pleadings may be amended in accordance with Mr. Nicoson's motion.

Mr. Nicoson: Now, I notice in the answer filed by the Carpenters that it is the answer of the Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, named in the complaint as United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor. I take it that is an indication of the correct name of the Carpenters [117] in this proceeding, and if I am so correct, I will move that the complaint be amended so as to show the correct name wherever the other name is indicated in the complaint. Am I right in that, Mr. Garrett?

Mr. Garrett: That is correct.

Trial Examiner Kent: The record may so show.

Mr. Collins: Mr. Trial Examiner and Mr. Nicoson, I made the suggestion a moment ago on behalf of my client, the Pioneer Electric Company, that it would be willing to stipulate to a Board con-

ducted election, and there was some statement from counsel here that would be acceptable and might stop the proceedings. I did not intend by that that the unfair labor charges against O'Keefe & Merritt Company would necessarily be stopped by that proceeding. I merely intended that the Pioneer Electric Company would be prepared to have that matter decided by an election. I would like to have either acceptance of that suggestion or denial of it.

Mr. Nicoson: I have no hesitancy in stating my position on that. It seems to me that that is an impossible stipulation for me to enter into, because the complaint clearly indicates and our proof will show Pioneer Electric Company and O'Keefe & Merritt are responsible to the certification of the Board as the result of the election that was held in their plant on November 20, 1945, and I can't enter into any stipulation which would take away any of the full force and effect [118] of any order that I expect to get as the result of this proceeding in this matter. So as far as the Board is concerned, I can't agree to what Mr. Collins has suggested.

Mr. Collins: In other words, you take the position, to see if I have the position clear, the Board at this time will not order an election or consent to an order of election for the employees of the Pioneer Electric Company. Is that the position?

Mr. Nicoson: I can't say what the Board will do. I can only say as Board's attorney what I will not agree to. The Board may not always agree with me, but as attorney for the Board in these proceedings and in answer to the suggestion you have made

here, I cannot consent or agree to the suggestion that you have made.

Now, if your Honor please, if there is nothing further to come up, before we adjourn, will you mark that as Board's Exhibit 2?

(Thereupon, the document referred to was marked as Board's Exhibit No. 2, for identification.)

Mr. Nicoson: If your Honor and the parties will recall, at the last session we had here last week there was some question concerning the intervention of the International Brotherhood of Electrical Workers. I have had marked as Board's Exhibit No. 2 a letter which was received this week, which in substance states over the signature of [119] Mr. DeMontreville, counsel for the International Brotherhood of Electrical Workers, that they no further wish to press their motion for intervention. I would like to have that marked as Board's Exhibit No. 2 and show it to the parties and offer it for the file.

Mr. Schullman: May I see that, please?

Mr. Collins: I have a copy of it.

Mr. Nicoson: I offer it in evidence.

Mr. Collins: No objection.

Mr. Schullman: No objection.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked as Board's Exhibit No. 2, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 2

[Letterhead Industrial Relations Associates]

March 7, 1946.

National Labor Relations Board

111 West Seventh Street

Los Angeles 14, California

Attention: Mr. Henry J. Kent, Trial Examiner

Gentlemen:

In the Matter of

Pioneer Electric Company

O'Keefe & Merritt Company

The International Brotherhood of Electrical Workers, through Economic Counsel C. DeMontreville, Legal Counsel James Wolf, and Business Representative Brice Worley, entered an appearance at the March 6, 1945 hearing in the above referenced case in which the United Steel Workers, CIO, have instituted unfair labor practice charges and are seeking invalidation of a certain contract entered into by AFL Local Unions.

The International Brotherhood of Electrical Workers on the record sought permission of the Trial Examiner to intervene if such action seemed desirable to the IBEW, and one week's time to file such Intervention Motion was accorded.

The International Brotherhood of Electrical Workers, notwithstanding that it has one hundred percent membership among the Electrical Maintenance-Construction employees, is not a party to any master or separate contract with either O'Keefe & Merritt or Pioneer Electric Company, is not cited

as a party at interest nor as co-defendant, and hence has no direct interest on the present state of the record.

We therefore are withdrawing our request to file motion for intervention and will not be represented further by our own economic or legal counsel or by and other counsel for other unions in this case.

We thank you for the considerations extended.

Very truly yours,

/s/ C. DeMONTREVILLE,

Economic Counsel for International Brotherhood of
Electrical Workers Local Union B-11 (AFL).

cc: Messrs. Chas. Dwyer

Brice Worley

[Endorsed]: Received March 11, 1946.

Mr. Nicoson: Now, I do not think your Honor has indicated your reaction to my suggestion that we recess for the purpose of exploring the possibility of a stipulation. If you agree with me, I suggest at this time that we recess until 1:30. I would also like for you to request Mr. Collins to have Mr. Daniel P. O'Keefe here at the beginning of the afternoon session. I understood Mr. Collins last time stated that he could have him here on 30 minutes' notice. I am giving him an hour and a half.

Trial Examiner Kent: Yes.

Mr. Collins: Mr. Trial Examiner, I am going to have [120] to do a little crying here, because

Mr. O'Keefe has been available all morning, and he had some other appointment that he broke last Wednesday to be here, and put it over to this afternoon, assuming that he would be done this morning. He has already gone to this appointment. However, I can have him here tomorrow morning. I think some of the things you wanted to prove by him we can stipulate to. There has been an admission here that O'Keefe & Merritt and the Pioneer Electric are engaged in interstate commerce, and those various matters you have asked for, I will have him here. We can have him here tomorrow morning at the opening of the session. He had an appointment last Wednesday or Tuesday afternoon and he put it off.

Mr. Nicoson: Will Mr. Durant be here this afternoon?

Mr. Collins: We will have Durant here. Neither Mr. Durant nor Mr. O'Keefe was subpoenaed, but I will have Mr. Durant down here at any time.

Mr. Nicoson: All right let us have Mr. Durant then this afternoon.

Trial Examiner Kent: Very well.

Mr. Garrett: Prior to the adjournment I would like to file the additional appearance of John Leo Harris, an attorney, as counsel for the Carpenters and Moulders and Stove Mounters. Mr. Harris is sitting on my right.

Trial Examiner Kent: What was that? [121]

Mr. Garrett: Prior to the adjournment I said, if your Honor please, I want to move at this time for the association of John Leo Harris, an attorney

sitting on my right, with myself as counsel for the Carpenters, Moulders and Stove Mounters.

Trial Examiner Kent: Very well. The record may so show. At this time then we will take a recess until 1:30.

(Whereupon, at 11:45 o'clock a.m., a recess was taken until 1:30 o'clock p.m.) [122]

After Recess

(The hearing was reconvened at 1:55 o'clock p.m.)

Trial Examiner Kent: You may proceed.

Mr. Nicoson: Mr. Stevenson informed me a moment ago out in the hall he would not be with us this afternoon.

Please mark this for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 3, for identification.)

Mr. Nicoson: If your Honor please, I have had marked for identification the original of the Petition for Certification of Representatives in Case No. 21-R-3101, in the matter of O'Keefe and Meritt Company and United Steelworkers of America, in behalf of Stove Division, Local 1981.

I have the original here, which I will show the parties. If admitted, I would like to have the opportunity of substituting copies for this document. I now offer it in evidence.

Trial Examiner Kent: It will be admitted, and prepared copies received in lieu of the original. The original may be withdrawn.

Mr. Collins: You mean "including" or "excluding." It seems to me there is some typographical error.

Mr. Nicoson: Yes. May I point out, as has been pointed out to me, that in the substituted copy in Paragraph 5, the description of the unit, there is to word "including." It [123] should be "excluding." I ask permission to amend it, accordingly, by interlineation.

Trial Examiner Kent: Yes, I think it might be physically corrected.

Mr. Nicoson: Please mark this document for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 4, for identification.)

Mr. Nicoson: I have had marked as Board's Exhibit 4, for identification, the original of an Agreement for Consent Election in Case No. 21-R-31101, in the matter of O'Keefe and Merritt Company. I offer it for the record. In the event it is admitted, I ask permission to withdraw the original and substitute therefore a copy. I show this original to the parties.

Mr. Schullman: What exhibit is that?

Mr. Nicoson: That will be Board's Exhibit 4.

Trial Examiner Kent: There being no objection, it may be admitted, and prepared copies substituted in lieu of the original.

Mr. Schullman: If the court please, in reference to Board's Exhibits 3 and 4, we have no objection to the use of the copies. But we do object to their

introduction in evidence, insofar as they apply to Local 792, the Painters, for the reason that clearly, on the face of those documents, first, [124] in Exhibit 3, the Petition for Certification, the Painters were excluded. They did not participate therein. And that the same situation prevails insofar as Board's Exhibit 4 is concerned.

More importantly, under oath of the representative of the Steelworkers in Exhibit 3, there appears a statement, which, on its face, couldn't be correct, to wit, "The following individuals or labor organizations claim to represent employees in the unit," and the language "none." As a matter of fact, it was known to all the parties that Local 792 had representation insofar as the Painters are concerned. If such statement be considered true, then it is proof positive on its face that the Painters therefore were excluded. We except merely, and object to the application of these exhibits as against Local 792.

Mr. Nicoson: If your Honor please, of course, I can't agree with counsel that either of these documents is susceptible to the interpretation he puts upon them, especially the statement that the Painters are expressly excluded in either one of the documents.

Mr. Schullman: Except, your Honor, we cannot be bound by, or attempt to be bound by an instrument to which we were not ever a party, and concerning which there never has been any notice thereof.

I make a motion for that reason that it not be admitted [125] as against us. I will be glad at the conclusion to file a brief thereon, and if the Examiner wishes to reserve ruling thereon, at the conclusion of the case, I think, the law will substantiate our position.

Mr. Garrett: Board's Exhibit 3 is objected to by my clients, the Stove Mounters, Carpenters and Moulders on the grounds it is incompetent, irrelevant, and immaterial, and shows on its face it is not binding upon these objecting parties.

Stove Mounters, Moulders and Carpenters also object to Board's Exhibit 4 on the ground it is incompetent, irrelevant, and immaterial, and shows on its face that it is not binding upon any of these objecting parties.

I would further call your attention to the fact that none of these parties, the Carpenters, Moulders, or the Stove Mounters are mentioned in either Board's Exhibit No. 3 or Board's No. 4.

Mr. Collins: I wish to object to the introduction of these exhibits on behalf of respondents, Pioneer Electric Company, and the named partners thereof, upon the ground that it is incompetent, irrelevant, and immaterial. It shows upon the face of it it is not binding upon the Pioneer Electric Company or any of its co-partners. It does not tend to prove or disprove any of the issues in this case. [126]

In that connection I wish to offer a stipulation. I will offer to stipulate that so far as the O'Keefe & Merritt Company is concerned, they will sign a

contract with the C.I.O. upon the same terms as the Pioneer Electric Company has signed with the A.F.L., with the following exceptions:

We will offer to sign a contract granting them maintenance of membership, with the customary escape clause. I make that exception because, to the best of my information and knowledge, all of the employees of the O'Keefe & Merritt Company, with the exception of two or three, are members of the A.F.L. It wouldn't be fair to force them into a union not of their own choice.

I also introduce another exception. The organizers for the C.I.O. have constantly claimed they will take O'Keefe & Merritt off the A.F.L.'s unfair list. I will make that a further condition. In other words, we will, on behalf of the O'Keefe & Merritt, offer to sign a contract with the Steelworkers granting them the same terms and conditions as the Pioneer Electric Company has given to the various A.F.L. locals, with the exception that they must get us off the unfair list, which they have claimed they could do, and granting them maintenance of membership, with the customary escape clause.

Mr. Nicoson: I can't enter into any stipulation of that kind. [127]

Mr. Collins: It will shorten the hearing so far as O'Keefe & Merritt is concerned if the C.I.O. wants to sign up with us. They say we won't bargain with them. We are willing to bargain with them. Now is their chance in open court to do that. I talked to Jerry Conway last week, and told him

we would bargain with him if he wanted to come and bargain.

The position of this employer is now very clear to this Board, I think. We are willing to have a consent election so far as Pioneer is concerned. We are willing to sign a contract so far as O'Keefe & Merritt is concerned. What is the use of all these hearings? We are just wasting everybody's time.

Trial Examiner Kent: Are you going to offer other exhibits of proof, showing that the Los Angeles Metal Trades Council, A.F.L., were agents or representatives of any of the unions named in these?

Mr. Nicoson: Oh, yes, we intend to put that in.

Trial Examiner Kent: Well, I already ruled on this. I assumed the exhibits had been shown to the parties and they were not objecting. I reserve my ruling at this time and reserve ruling on the admission of these particular exhibits at this time. They may be subsequently offered.

Mr. Garrett: May my clients have the further objection entered, also, for lack of proper foundation. That is, as to [128] the Stove Mounters, the Carpenters and the Moulders.

Mr. Collins: Mr. Trial Examiner, it seems to me that we are going to be wound up in something that is going to take us weeks to try, if we don't get at the real issue.

It seems to me that the entire issue is whether this O'Keefe & Merritt and Pioneer Electric are one and the same concern. If you recall, I have

offered to stipulate, I made an offer on behalf of my client Pioneer Electric that we will consent to an election. As far as O'Keefe & Merritt is concerned, we will sign a contract. That is more than bargaining.

If the Board has any objection at all to these various offers of mine, it must be on the theory O'Keefe & Merritt are one and the same concern with Pioneer. We could very readily try that issue in half a day, and get it over with.

Mr. Schullman: If the court please, I am inclined to agree. It isn't a mere acquiescence, because I fall on this side of the table, but apparently the relief sought here is being granted now by an offer made by respondents.

I agree that the Board having charged that the corporation and partnership are identical interests or persons or entities, it couldn't very well accept a stipulation and abandon its charge.

I think, therefore, from the standpoint of chronology of proof—we have no right to suggest the chronology—I think once you resolve that issue you have then remedied every charge that exists in the entire pleadings, for the sake of expedition. You have answered the purpose of this action. [130]

Therefore, I concur in the suggestion made by counsel for respondents in that we can proceed on the proof, whichever may be adduced, concerning the facts of whether or not O'Keefe and Merritt are the same as Pioneer Electric, realizing that the

proof and order are entirely within the discretion of the Trial Examiner.

Trial Examiner Kent: Well, of course, I have to assume the allegations of the complaint are made in good faith. I don't think it is necessary for me to limit the Board's presentation at this time.

Mr. Schullman: We don't intend——

Trial Examiner Kent: I have reserved my ruling on these particular documents.

Mr. Schullman: We don't mean that. What we mean is this: This is not an attempt to limit the presentation of the factual proof. If you go into any forum to seek a certain type of judgment and that judgment is being offered by the party against whom the action has been brought, then the issue, insofar as that end of it is concerned, is moved and resolved. The only reason why the Board, as I see it, cannot accept a justly stipulated offer is because there is a charge now pending, in which charge the alleged O'Keefe and Merritt and the Pioneer Electric are one and the same entity.

Therefore, the resolution of that charge would remove any obstacle to the acceptance of the stipulation. We don't [131] seek to foreclose anybody on the offer of proof or whatever proof will come in, or say, you adduce testimony that will give the Trial Examiner a chance to determine; that will unquestionably shorten the hearing.

Trial Examiner Kent: Yes, except you are putting the Trial Examiner in this position: The Trial Examiner, in his intermediate report, of course,

makes recommendatons to the Board. The Board's order is really the decision in the case.

Mr. Schullman: That is right.

Trial Examiner Kent: Now, assuming I ruled the two entities were not identical, and thereby preclude Board's counsel from putting in a complete case, then I might wind up with part of a record and cause the hearing to be reopened. I think we had better take a complete record.

Mr. Collins: Before you rule on this, let me point this out to you: We are here before this hearing today to determine whether or not the contract between A.F.L. and the Pioneer should be torn up. If Pioneer is a separate legal entity, clearly you have no jurisdiction to so order. If they are one and the same, if they are the same as the O'Keefe and Merritt Company, that would be the logical thing. If O'Keefe and Merritt and Pioneer are one and the same, therefore, O'Keefe and Merritt would be guilty of unfair labor practice if they didn't bargain in good faith with the C.I.O.

Is Pioneer and O'Keefe and Merritt the same, or are they separate, [132] legal entities. If they are separate, legal entities, on behalf of O'Keefe and Merritt I have stated right now I will not only bargain with them, I am laying down the terms of the contract I will sign, which among other things amounts to 20 per cent more pay than any other stove industry in this area is receiving. It is a contract, I am inclined to believe, the C.I.O. will accept. The only thing they will object to is the maintenance of membership. Certainly we are down to

bargaining, and that is the only thing they have objected to. If the Pioneer is a separate, legal entity—if it is—I am giving them more than they are entitled to. I am giving them the right to come in and tear up a good contract, signed by somebody that never claimed membership therein. I am giving them a chance to come in and have an election. That is more than they are entitled to.

Mr. Tyre: May I point out to your Honor that there are two other problems involved that Mr. Collins failed to mention to the court. One is the question of not only bargaining collectively but bargaining in good faith, and a number of items that go to make up what is good faith, including the material that the Board is going to introduce into the evidence. The second matter which Mr. Collins omitted to state to the court is that there is also an 8 (1) charge in this case, which again would have relevance to the question of 8 (5), in any event it is evidence different in some [133] instances, at least, from evidence that we will put in to prove the 8 (5).

Mr. Collins: I am not attempting to stop the complaint as against the O'Keefe and Merritt Company and various employees and so on of unfair labor charges. That is an entirely separate transaction. If the Board cares to proceed with that, that is another thing. I am merely trying to shorten all this business up here if I can. I can visualize people coming in here for days talking about whether we will bargain or not. I can also visualize proof going on for days as to whether or not

the other charge is substantiated or not, and I believe now we are arguing about things which will become absolutely moot if we decide whether or not the Pioneer Electric Company is a separate, legal entity having a right to make separate contracts.

Trial Examiner Kent: I think in order to get a complete record I have got to take all the relevant testimony. Assuming I narrowed the presentation down to whether or not the Pioneer, the partnership, and the corporation, are tied up together so that the hearing may be shortened and ruled that neither of the employer respondents may be an alter ego of the other. It might require a double hearing for the Board might reopen the hearing and order additional evidence taken on other phases of the case it deemed material. [corrected in pencil.]

Mr. Collins: That wouldn't be a waste of time, on the other hand you might save several weeks time, because the Board might decide it the other way. You are not going to [134] lose anything.

Trial Examiner Kent: No, I think I will let Mr. Nicoson proceed with his proof.

Mr. Nicoson: Thank you, your Honor.

Mr. Collins: I have an objection. I don't believe your Honor has ruled on the objection. I have made an objection to this.

Trial Examiner Kent: Yes. Well, of course, you have the benefit of the automatic exception to an adverse ruling.

Mr. Nicoson: Your Honor is reserving ruling on 3 and 4?

Trial Examiner Kent: On Exhibits 3 and 4, that is right.

Mr. Collins: Which one was 3, Mr. Nicoson?

Trial Examiner Kent: 3 was the petition.

Mr. Nicoson: Mark this Board's Exhibit 5.

(The document referred to was marked as Board's Exhibit No. 5, for identification.)

Mr. Nicoson: I have had marked for identification as Board's Exhibit No. 5 the original of the tally of ballot in the case No. 21-R-3101, dated November 20, 1945. I offer it for the record and ask permission, if it is accepted into evidence, to withdraw the original and substitute therefor copies.

Mr. Schullman: In behalf of Local 792, there is no objection so far as the substitution is concerned, but again we object to the introduction of Board's Exhibit 5 as not [135] being applicable as against Local 792, because on its face it shows votes cast for the Los Angeles Metal Trades Council, of which the Painters Local 792 is not and never has been a part thereof, and repeating the same objections we previously had to Exhibits 3 and 4, we object to Exhibit 5.

Mr. Collins: On behalf of the respondents, Pioneer Electric Company, I make the same objections I made to Exhibits 3 and 4 as to Exhibit 5.

Mr. Garrett: The Carpenters and Moulders and Stove Mounters make the same objection to Board's Exhibit No. 5 as they did to Board's Exhibits 3 and 4.

Trial Examiner Kent: May I see a copy of it,

please? I will reserve ruling on Board's Exhibit No. 5 at this time. It may be reoffered later.

Mr. Nicoson: Mark this Board's Exhibit No. 6.

(The document referred to was marked as Board's Exhibit No. 6, for identification.)

Mr. Nicoson: I have had marked for identification as Board's Exhibit No. 6 consent determination of representatives signed by Stewart Meacham, Regional Director, National Labor Relations Board, in Case No. 21-R-3101, in the Matter of O'Keefe and Merritt, and I offer it for the record, and ask permission, if it is received into evidence, that I withdraw the original and substitute therefor a copy.

Mr. Schullman: In behalf of Local 792 of the Painters, [136] we object to the introduction in evidence of Board's Exhibit No. 6 as applying to my clients, for the reasons heretofore stated, and in addition, which additional reason shall apply to all three exhibits, to wit, 3, 4 and 5, that Board's Exhibit No. 6 and the previous exhibits clearly show that this is a consent election and a consent determination; that therefore you cannot conclude by such consent a party who is not a party thereto, and that the attempt to so conclude a party who has no knowledge of and who has not participated by consent of other people, to wit, another organization to which my clients do not belong, you are thereby depriving them not only of the rights in the Wagner Labor Act, but even a more paramount right, in the Constitutional right of due process, and therefore we respectfully request that Board's Exhibit

No. 6 and the previous Exhibits, 3, 4 and 5, shall not apply or be given or dealt with any force or effect against my clients, Painters Local 792, and the fact that this Trial Examiner, if you please, nor the Board on a Constitutional question, if you please, irrespective of any attempt to so conclude parties, can conclude parties who have not been party to the consent.

Mr. Garret: Preclude.

Mr. Schullman: Conclude is correct, determine, end.

Mr. Collins: Are you through, Mr. Schullman?

Mr. Schullman: Yes. [137]

Mr. Collins: On behalf of the Pioneer Electric Company and the members of the co-partnership Pioneer Electric Company, I object to Board's Exhibit 6 on the ground it is incompetent, irrelevant and immaterial, does not tend to prove or disprove anything at issue in this case, so far as those respondents are concerned, and upon the further ground that there is no proper foundation laid.

Mr. Garrett: The Carpenters, Stove Mounters and Moulders make the same objections to Board's Exhibit No. 6 as those previously made to Board's Exhibits 3, 4 and 5.

Trial Examiner Kent: Let me see the exhibit, please. I make the same ruling. I will reserve ruling, pending the renewal of the offer.

Mr. Nicoson: The Board calls Charles Spallino.

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. Will you state your name for the record?

A. My name is Charles Spallino.

Q. What is your address, Mr. Spallino?

A. 1200 North Britannia Street.

Q. Is that in the city of Los Angeles? [138]

A. In Los Angeles.

Mr. Garrett: I didn't understand that address.

The Witness: 1200 North Britannia Street.

Q. (By Mr. Nicoson): What is your business or occupation?

A. Well, I am working at O'Keefe and Merritt.

Q. In what capacity?

A. Well, the last job I was a motor repair man. That was up until yesterday.

Q. How long have you been employed by O'Keefe and Merritt?

A. Going on 19 years.

Q. In what capacities have you been employed?

A. Oh, I have had at times every department in there, I have worked in. Pretty well refrigeration is the biggest part of my time, I have spent most of my time in refrigeration, and I have worked as a carpenter helper, as maintenance, and almost everything you can think of. I have even done some building there as a riveter.

(Testimony of Charles Spallino.)

Q. Have you ever had any membership or association with the United Steelworkers of America?

A. Not up until about two years ago.

Q. What was your association or membership in the United Steelworkers of America about two years ago?

A. Well, I was just a signed up member.

Q. Did you otherwise participate?

A. I did participate to one meeting. [139]

Q. Do you know Joseph Spallino?

A. Yes, sir, he is my brother.

Q. At that time that you were speaking of in your testimony of membership in the United Steelworkers, what position did Mr. Spallino hold, if you know?

A. I am not so sure whether he was assistant superintendent, but I think that is what he was at that time.

Trial Examiner Kent: This is your brother?

The Witness: Oh, I take that back. He was working for Pioneer Electric.

Q. (By Mr. Nicoson): And in what capacity, if you know, was he working for the Pioneer Electric?

A. He was a superintendent in the Pioneer Electric.

Mr. Schullman: Pardon me. Was the time fixed on that, Mr. Nicoson?

Mr. Nicoson: Two years ago he said.

The Witness: That was during the war.

Q. (By Mr. Nicoson): During this period, did

(Testimony of Charles Spallino.)

you have any conversation with Joseph Spallino concerning the United Steelworkers?

A. Yes, I did. I was——

Q. What was that and where did that conversation take place?

A. Well, I was called by him and taken to Bill O'Keefe's office.

Q. That is William J. O'Keefe? [140]

A. William J. O'Keefe.

Q. Who is William J. O'Keefe?

A. He is the son of Mr.—I don't know his initials. Mr. O'Keefe, that is Senior.

Q. Do you know what capacity Mr. W. J. O'Keefe had at that time?

A. Well, he was the superintendent of the plant. This was up in Collins' office. Collins was present, if I can state that.

Q. What Collins do you mean?

A. Cecil Collins, the attorney.

Q. Cecil Collins, the attorney here?

A. That is the attorney.

Mr. Collins: May we have the date of this, Mr. Nicoson?

Mr. Nicoson: Yes, I am going to inquire. Who else was present?

A. Well, it was just us four.

Q. I think I asked you and I am not too sure that you answered at the time, in what capacity did Mr. W. J. O'Keefe serve?

A. Well, he sat there silent.

Q. No, no, in what official capacity, I believe

(Testimony of Charles Spallino.)

you testified that he was superintendent of the plant.

A. He was the superintendent of the plant.

Q. What plant? [141]

A. O'Keefe and Merritt plant.

Q. Can you fix for us the time when this conversation took place?

A. Well, the meeting was on a Sunday, I don't recall the date or the month, it was on a Sunday, the meeting was held.

Q. Can you fix it as to the part of the year?

Mr. Collins: May I interrupt just a moment? Mr. Durant is on the phone out there. Do you want him down here now?

Mr. Nicoson: Yes.

The Witness: It was Sunday in 1942. I can't recall the month.

Q. (By Mr. Nicoson): Can you fix it as to whether or not it was in the spring, fall, winter or summer?

Mr. Schullman: Pardon me, counsel. Did he say Sunday in 1942?

Mr. Nicoson: That is right.

Mr. Schullman: Then it was longer than two years ago, isn't that correct?

The Witness: Well, it was two years ago. It was during the war.

Mr. Schullman: This is 1946. That is why I am trying to correct that.

The Witness: It was in about that time.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Now, can you answer my question as to whether or not it was in the spring, fall, winter or summer? [142]

A. Well, it was pretty warm that day. It could have been in the spring. It was on a Sunday that we had this meeting.

Q. Now, counsel has pointed out that you said 1942 and he has also pointed out to you that 1942 would be more than two years ago. Can you state whether it was two years ago or 1942?

A. Well, I would say it was about two years ago.

Q. About two years ago. What was said in the conversation that you had in Mr. Collins' office? By the way, where was Mr. Collins' office at that time?

A. It was upstairs in the personnel department.

Q. In what building?

A. That is the office in the front of the plant.

Q. What plant?

A. At O'Keefe and Merritt.

Q. Now, will you tell us what was said at that time and who made the statement?

A. Well, it started out with——

Mr. Garrett: Wait a minute, now. There is going to be some objections to this. May I have the witness on voir dire for a few questions relating to foundation? I think it is quite clear that the foundation is insufficient at the present time. We have a witness that in the first place is rather difficult or is going to be rather difficult for me to cross-examine this witness, anyway, because there is no [143] evidence that anyone connected with any of my cli-

(Testimony of Charles Spallino.)

ents was present at the conversation, and I am going to object later, of course, on that ground. And I call your Honor's attention to the fact that we have here a rather unique spectacle of a witness who can't remember whether a certain conversation about which he is willing to attempt to tell us the details, we have here a witness——

Mr. Nicoson: Your Honor, I object to the expostulation of counsel. If he wants to examine this witness on voir dire, I am perfectly willing to have him do that. If he wants to make a speech, I object.

Mr. Garrett: I am telling you why I want to examine him on voir dire, your Honor. I know that I was too long in stating my reasons, but it just seems to me to be a little bit unwise to let the witness go as to foundation while he is still in such a state of mind that he can't remember whether the conversation took place in 1942 as he first stated, or two years ago, which would be 1944, as he later stated.

Mr. Collins: I object to the evidence upon the ground there is no proper foundation laid. I don't know whether the conversation was in 1942 or 1944. I would be impossible to cross-examine him.

The Witness: Does the witness have a chance to explain something, your Honor, I ask? [144]

Trial Examiner Kent: What do you have to say?

The Witness: Well, I have been under pressure since I left here last Wednesday, due to the fact I

(Testimony of Charles Spallino.)

might remember things that has happened in the plant and things that has happened to me.

Mr. Garrett: If the witness is not in a state of mind to testify with some clarity——

The Witness: I am in a state of mind.

Trial Examiner Kent: You may inquire. I think you can go into your matters on cross-examination. I think the objection primarily goes to the weight of the testimony.

Mr. Garrett: There is no foundation as yet.

Mr. Collins: There is an objection before the court as to lack of foundation.

Mr. Garrett: Here is a witness who throws some doubt upon the record as to his mental capacity at the present time, who can't remember the difference between 1942 and 1944.

Mr. Nicoson: Can you testify to all the conversations you had in 1942, 1944 and 1945 or last week?

Mr. Garrett: If I came to court you can bet your life I would be in position to.

Mr. Nicoson: The witness has testified to his best knowledge it was two years ago. If you want to examine him on that, I have no objection.

Mr. Garrett: May we have him on voir dire, your Honor?

Trial Examiner Kent: Very well. You may proceed.

Q. (By Mr. Garrett): When did you first go to work for the Pioneer Electric Company?

A. I never worked for the Pioneer Electric.

(Testimony of Charles Spallino.)

Q. Your testimony is now that you never worked for the Pioneer Electric.

A. That is right.

Q. Do you recall your testimony of about five minutes ago on the stand when you were being examined by Mr. Nicoson? A. Yes.

Q. With respect to who you worked for?

Mr. Nicoson: Just a minute. I am going to object to [146] that question. The purpose of this examination is voir dire to establish a foundation, namely, as to the time and place and who was present at the conversation which he is about to testify to. The rest of this is cross-examination, and improper.

Trial Examiner Kent: I think there is merit in counsel's argument. I will sustain the objection.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Now, who was Joseph Spallino working for at the time of this conversation, if you know?

A. He was working for Pioneer Electric.

Q. How long had he been working for Pioneer Electric, if you know?

A. Well, with the date, the date the war broke out, in 1942 or 1943, whatever it was. I can't remember the exact date.

Q. He went to work for the Pioneer Electric about the time the war started, is that correct?

A. Yes.

(Testimony of Charles Spallino.)

Q. By that you mean the participation of this country in the war, is that correct?

A. That is correct.

Q. And you have a distinct recollection when that was, don't you?

A. I don't have the date or the month when that happened.

Q. You remember Pearl Harbor, don't you?

A. Yes, that was June the 7th, or whatever it was.

Q. When was it?

A. June the 7th, or whatever it was, I don't remember.

Q. How long have you resided in this country, Mr. Spallino? A. In this country?

Mr. Nicoson: Objected to as immaterial and improper voir dire examination. On cross-examination it would be proper.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): This conversation then took place shortly after Joseph went to work for Pioneer Electric, did it? A. Well, yes.

Q. I see.

A. I don't know how soon it was, but he was working for Pioneer Electric.

Q. I see. Did you make any notes or memoranda about this conversation you had?

A. I am going to tell you one thing, I only went to school in the fifth grade, so I am not educated, so I didn't make notes.

(Testimony of Charles Spallino.)

Mr. Nicoson: You just answer the question.

Q. (By Mr. Garrett): You didn't make any memoranda of the conversation, is that right?

A. That is right.

Q. Can you write? [148]

A. Yes, I can write.

Q. But you did not make any memoranda, although you were able to write about it?

Mr. Nicoson: Objected to as having been asked and answered, and improper voir dire examination.

Trial Examiner Kent: Objection sustained.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Now, when you went to that meeting that you have testified took place, when you were called there by your brother who had just recently gone to work for Pioneer Electric——

Mr. Nicoson: Objected to as assuming a fact not in evidence and not the witness' testimony.

Q. (By Mr. Garrett): That is on that Sunday you went to this meeting, which was shortly after your brother had gone to work for the Pioneer Electric, wasn't it?

A. Well, he was working for the Pioneer Electric when I——

Q. And he went to work at the time of the start of the war, is that correct, for them?

A. It was during the war, because they had not been established, it took them a long time before they got the place built up there.

Q. Do you recall whether they started building

(Testimony of Charles Spallino.)

it up before they started the war or afterward?

A. It was during the war. [149]

Q. Who were you working for at the time of this conversation?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: He may answer.

A. I was working in the Libby.

Q. (By Mr. Garrett): I didn't get the answer.

A. I say I was working for the Libby line, which is part of the machine shop.

Q. When you say the Libby line, was that some kind of a production line?

A. Yes, sir, they have turret lathes there and milling machines and I don't know the names of all those machines.

Trial Examiner Kent: That was part of O'Keefe & Merritt?

The Witness: Yes.

Q. (By Mr. Garrett): Do you recall what you were making at that time?

A. What I was making?

Mr. Nicoson: Objected to as immaterial, not proper voir dire examination. He says he wants to ask these questions for the purpose of laying the foundation for a conversation that took place and the substance of the conversation. I submit that this is just about as remote from voir dire examination as the human mind can conceive.

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: All right. [150]

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Do you recollect whether this conversation took place during working hours or not? A. During working hours, yes.

Q. What shift were you working at that time?

A. Day shift.

Q. Day shift? A. That is right.

Q. And you were working for the O'Keefe & Merritt Company at that time, were you?

A. That is right.

Q. How many days a week was the O'Keefe & Merritt Company working?

Mr. Nicoson: Objected to as immaterial.

Mr. Garrett: Just a moment. Pardon me, Mr. Nicoson.

Mr. Nicoson: I am sorry. I thought you had finished.

Mr. Garrett: Pardon me, sir.

Mr. Nicoson: Was there more to that question?

Mr. Garrett: No, that is all. How many days a week was O'Keefe & Merritt Company working at that time?

Mr. Nicoson: Objected to as immaterial, not proper voir dire examination.

Trial Examiner Kent: He may answer, if you know, how many days a week were they working?

A. How many days a week? We were working around 60 hours a week, I think, around that time.

Q. (By Mr. Garrett): Well, how many days?

A. Well, six days.

Mr. Garrett: No further questions.

(Testimony of Charles Spallino.)

Mr. Collins: May I have the witness on voir dire?

Trial Examiner Kent: Very well.

Q. (By Mr. Collins): Mr. Spallino, you say that this conversation took place in the office of Cecil Collins, the attorney for O'Keefe & Merritt Company, sometime after the war started in 1942 or 1943, whenever it started, is that right?

A. Yes, sir.

Q. Can you estimate about how many months it was after the declaration of war?

A. All I know is when the C.I.O. was organizing there. You will remember that date as well as I do. [152]

Q. No, I must confess I don't. I don't know when they were organizing there. How long after this June 7th or whatever date it was you have already told us in 1942 did this conversation take place? Do you remember that?

A. I don't remember the exact time.

Q. The nearest you can come to it is within two years of the date, is that right? A. Yes.

Q. Is that right? A. Yes.

Mr. Collins: That is all. No further questions.

Mr. Nicoson: There is an objection outstanding now, I think.

Mr. Collins: I now object to the conversation taking place in the office of Mr. Collins and in the presence of Joe Spallino and W. J. O'Keefe, on the ground there is no foundation laid. He can't re-

(Testimony of Charles Spallino.)

member the date within two years, which is a long time.

Mr. Garrett: The Stove Mounters and Moulders and Carpenters object to his being permitted to detail the conversation on the ground, first, that no proper foundation has been laid; on the second ground that the witness' answer showed his recollection to be so imperfect as to cast great doubt as to whether any weight should be given to his testimony, should he be permitted to testify; on the third ground [153] that the conversation, if any, is not binding upon any of these objecting unions; first, on the foundation that has been laid it has not been shown that any member, representative, agent, or person connected in any capacity with any of these objecting unions was present; on the further ground that it has not been shown by the foundation that the conversation concerned anyone with whom these objecting unions are charged in the complaint with having entered into contractual relations.

Mr. Schullman: On behalf of Local 792, we object to any testimony of this witness insofar as it may affect Local 792 for a few reasons which we believe are more legally pertinent, not only more legally pertinent, but maybe more pertinent insofar as Local 792 is concerned. First we object because of the fact that it has been stated there were no persons present, either principal or agent, who could possibly involve Local 792, but more importantly than all, I think if you will look at the com-

(Testimony of Charles Spallino.)

plaint in this case, there is no allegation whatever which would permit testimony of such a hiatus in time, assuming any portion of the witness' testimony would be applying to us, any part of it, that it occurred either in 1944 or 1942, there is no allegation in the complaint that raises anything until at least 1945, October, and the time element of the two years or three years in the event they are talking about this in 1942, or at least a year and a half, assuming that it is in 1944, [154] and possibly visiting matters which are in the complaint as being first commenced in being or esse October 1, 1945. Therefore, it is totally incompetent, irrelevant, and immaterial, does not tend to prove or disprove any issues of the case, and no testimony can be adduced of this matter which has any legal effect.

Mr. Garrett: My union would make the further objection that this is incompetent, irrelevant, and immaterial, if your Honor please.

Trial Examiner Kent: Counsel may proceed.

Mr. Nicoson: Do I understand the objections are overruled?

Trial Examiner Kent: Yes.

Q. (By Mr. Nicoson): Will you now state, Mr. Spallino, at that time what was said and who said it?

A. Before I got up to Collins' office, Joe Spallino at that time was trying to advise me, why did I ever go to that meeting, and I told him that Sunday is my day off and I just saw fit to go anywhere

(Testimony of Charles Spallino.)

I wanted to, and I thought I was free to do that on Sunday. Anyway, I put him on the spot.

Q. Never mind. What was said and who said it?

A. So we went to Collins' office and they asked me why wasn't the company treating me——

Q. Who asked you? A. Cecil Collins.

Q. Asked you why what?

A. Why was it I had to go to a union, wasn't I getting satisfaction, wasn't they treating me all right there, and I told him that I had my reasons why I went to the meeting, because I had not been treated well, and Bill O'Keefe, when I pointed to him, that several occasions there when I tried to get a break, right soon after I had an accident there and came back to work, Bill O'Keefe put me to work at nights, and at that time I was telling this to Bill, I was saying it to him, that I was not treated so well, and I was put on the job at nights in the projectile department, sent there to take charge of it as inspector and sort of leadman. It was something I didn't know anything about. Well, I accepted the job for a while at nights.

Q. Is that all what you were telling Mr. O'Keefe?

A. Yes, and those two weeks that I worked nights, the boys that were working nights there were on a bonus that they were making from \$1.75 to \$2.00 and \$2.50 an hour bonus, so I asked him why was it that I didn't get in on this bonus, that I should be entitled to some of that bonus, but he told me that I was not entitled to this bonus and that I

(Testimony of Charles Spallino.)

didn't like to work at nights. He wanted me to learn the trade there and show him some production and he wanted to make me a foreman in the night department, and he says if you don't want it that way, you can come back to work days, but he wouldn't put [156] me on the bonus, so a lot of sarcastic answers——

Q. Never mind. What was said?

A. I was talking to Bill at the time, I was telling him all the reasons why I thought I needed somebody to take care of my interests, because I couldn't go to them for any advice or for any help to better me in any way. He just seemed to ignore me all the times that I did ask him for a break.

Q. Was there anything further said at that meeting?

A. So they told me that——

Q. Who told you?

A. Well, between Joe and Collins here, that things would be taken care of.

Mr. Collins: Just a moment, I object to that. Between Joe and Charlie, who said what?

Trial Examiner Kent: Yes, try to state what you said and what the other gentleman said, and name the people who said it.

The Witness: Well, Joe Spallino——

Trial Examiner Kent: Said what?

The Witness: Says that I shouldn't get mixed up in that because they will try to give me a break somewhere.

Q. (By Mr. Nicoson): Did Mr. Collins have anything to say about that?

(Testimony of Charles Spallino.)

A. Yes, he says, "Yes, you have been with us a long time" and Joe Spallino was to give me a break, or to see that I would get some breaks in here now, and so they wanted information [157] who and what, appeared to me that they wanted information on who was at this meeting.

Mr. Collins: Just a moment. I move that the words after "appeared to me" be stricken, upon the ground that is a conclusion of the witness. He can testify to what was said.

Trial Examiner Kent: It may be stricken. Try to state who said what and say what they said.

Mr. Nicoson: You leave the drawing of conclusions to somebody else. You tell us what was said and who said it, that is all.

The Witness: So I promised them that I would not have anything to do anymore with the union, just go back and work, and they didn't have nothing to worry about, so I went back to work.

Q. (By Mr. Nicoson): Do you know whether or not there were any further efforts made for the employees to associate themselves with the United Steelworkers at that time?

A. No, it was quite a while that we was not bothered any more with the C.I.O.

Q. Was there another attempt

A. Yes, soon after the war.

Q. What do you mean, soon after the war?

A. Well, sometime after V-J Day.

Q. About how long after V-J Day? [158]

(Testimony of Charles Spallino.)

A. Well, I would say within two or three months.

Q. Two or three months? A. Something.

Q. Do you know when V-J Day was, Charles?

A. I don't remember the date.

Q. How long ago from now was it? How far back from now was it?

A. Let's see. It would be about eight months.

Q. About eight months?

A. Somewhere around about eight months.

Q. How far back from now was it as you now recall it that the C.I.O. began efforts again?

A. Well, I don't know. That was around in November or October, somewhere around that time.

Q. Could it have been before then?

A. Probably could have.

Q. Can you describe for us what occurred in and around the plant that you saw about the C.I.O. or its organizers?

A. Well, they had leaflets there every day.

Q. What? A. Leaflets or literature. [159]

Q. What did he do with it?

A. Passed them out at the entrance.

Q. To whom?

A. To the employees, to all employees.

Q. Did he do that on more than one occasion?

A. Yes.

Q. To the best of your recollection how long did this handing out of the leaflets occur, what period of time?

A. I would say about two or three days.

Q. For how long?

(Testimony of Charles Spallino.)

A. Well, in fact, we do get some now, now and then. Of course, we don't get them as often now.

Q. I am talking about at or about that time. You say they were handed out about every two or three days.

A. Yes.

Q. How long did that go on?

A. That went on through the whole—before the election, very frequently.

Q. Did the C.I.O. or its organizers use any other devices to communicate with the employees?

A. Yes, they had a PA system.

Q. What is a PA system?

A. It is a—one of these sound trucks.

Q. How often would you see the sound truck around there?

A. Well, they came around at least once a week, that is, [160] prior to the election; on a Friday. Mostly on Fridays, prior to the election.

Q. Someone would speak over the PA system?

A. Yes.

Q. The sound truck? A. Yes.

Q. What was the nature of the speech or talk?

A. The talk was they were giving us a program of what the C.I.O. was doing throughout the country, and what they could do for us.

Q. State whether or not you know of any meeting held by the C.I.O. during that period?

A. Yes, there was one. I heard about it, but I didn't—

Q. You didn't attend?

A. I didn't attend.

(Testimony of Charles Spallino.)

Q. Did I understand you to say a moment ago that the C.I.O. is still passing out leaflets around the plant?

A. Yes, they have, notifying development, things like that. I think it has been a couple of times after that, after that election.

Q. Do you know a Mr. John Levascos?

A. Yes, sir.

Q. Who is Mr. Levascos?

A. Well, he is an expediter in the O'Keefe & Merritt.

Q. Do you have any idea how long John Levascos has been [161] employed by O'Keefe & Merritt?

A. Well, he served in the Navy for awhile. If you want to include the time, how long he has worked there, since he is out of the Navy or before——

Q. Do you know when he first went there, went to work for O'Keefe & Merritt?

A. He must be there several years, because he happened to be a member of the Five and Over Club.

Q. What do you mean by several years?

A. I would say seven or eight years.

Q. During that time he has spent some time in the Navy; is that correct? A. Yes.

Q. Do you have any idea how long he was in the Navy? A. I would say roughly two years.

Q. When was he in the Navy for two years, over what period of time?

A. Let's see, this is '46. I would say between

(Testimony of Charles Spallino.)

'42 and—1943 and 1945; somewhere around that time.

Q. Do you recall when he returned from the Navy, about when?

A. Well, it was about the middle part, I would say, or the early part of last year.

Q. Do you know anything about the Five and Over Club? A. Yes, I do. [162]

Q. What is the Five and Over Club?

A. Well, it is a sort of a social club that the company——

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Mr. Collins: Objected to on the ground it calls for a conclusion of the witness.

Mr. Nicoson: Read the question.

(The question was read.)

Q. (By Mr. Nicoson): Do you know what the Five and Over Club is? A. Yes.

Q. Have you ever had any connection with the Five and Over Club? A. Well, I held office——

Q. Answer yes or no. A. Yes.

Q. What connection have you had with the Five and Over Club?

A. I held office as vice president for four years and president for three years.

Q. What is the Five and Over Club?

Mr. Collins: Objected to as calling for a conclusion of the witness, a legal conclusion.

Mr. Nicoson: I will withdraw the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): What does the Five and Over Club do, [163] or what did it do?

Mr. Collins: Objected to on the ground it is incompetent and immaterial; not tending to prove or disprove anything in this case.

Mr. Nicoson: That I will stand on.

Trial Examiner Kent: I would be inclined to sustain the objection. I can't see it has any materiality, except as background. Is that the purpose?

Mr. Nicoson: I submit, your Honor, this is all preliminary. And I submit your Honor's unfair ruling at this time, in making the statement you have in the record at the moment, that it doesn't have any materiality except as background, without having heard the evidence of what the Five and Over Club is, which I will show you in a moment, if you will permit me to, is involved in these proceedings. I submit it is an unfair statement of the Trial Examiner.

Trial Examiner Kent: Well, the allegations seem, to my recollection, to start with, I thought, October, 1945.

Mr. Nicoson: That is correct. Of course, you have to have identification of persons, organizations or anything else that has anything to do with the unfair labor practices which I have alleged in my complaint. I am now trying to show you what they are and trying to identify so the record will clearly reveal what they are, and then I will show you how they become involved. You can't possibly show the

(Testimony of Charles Spallino.)

whole [164] purport of this line of examination by any single question. You have to lay preliminary ground to make the descriptions so they will stand out in the record and the record will show what they are.

Mr. Garrett: I will withdraw my objection. .

Mr. Schullman: Without making any objection to this single line of inquiry, in support of the Trial Examiner's statement, I think we enunciated very valid rules. I agree that the background may be shown in N.L.R.B. cases where they are a little different than this type of a case, complaint case. But anything that occurred of any kind or description prior to the date of election, October 1, 1945, has no relevancy to this case, because, assuming the worst occurred prior to this time, it all is merged and cured by the parties in an election, without my own client being involved, on November 19, 1945.

So that assuming that Mr. Collins killed somebody and that the C.I.O. committed unfair labor practice and the A.F.L. committed the same, I agree that a normal case, we don't have a consent election which cleans it up. That is why my original objection was to all testimony relating to assumed coercion or anything that occurred prior. You couldn't tie it in that consent election, that it was a stop-gap, so that background is not involved any more.

Trial Examiner Kent: If the allegations of the complaint [165] are sustained, the consent election

(Testimony of Charles Spallino.)

would be no bar to the admission of this testimony.

Mr. Nicoson: Will you read the question, please?

(The record was read.)

The Witness: The Five and Over Club is a social club and it takes care of the members, that is, compensation. We have a death benefit; sort of a social club.

Q. (By Mr. Nicoson): How long has the Five and Over Club been in existence, to your knowledge?

A. I would say since 1935.

Q. What is the prerequisite of membership into that club?

A. How is that? I didn't understand.

Q. Who may be members of the club?

A. Who may be members of the club?

Q. Yes.

A. Anyone working five years or over.

Q. Where? A. At O'Keefe & Merritt.

Q. Was there a Five and Over Club in existence at the time you testified about the C.I.O. handing out the handbills? A. Yes.

Q. And the sound truck and the like?

A. Yes.

Q. At or about that time did you have a conversation with Mr. Daniel P. O'Keefe with respect to a grievance committee? [166] A. Well, I—

Q. Answer yes or no. A. Yes.

Mr. Schullman: Pardon me. Counsel, may we get a time? At or about what time? I don't know what time you are referring to.

(Testimony of Charles Spallino.)

Mr. Nicoson: The time of the C.I.O. campaign.

Mr. Schullman: Is that the one you are relating to eight months ago? You spoke about two campaigns.

Mr. Nicoson: That is the latter one. That is the one he is talking about. That is the one he has identified in the record.

Mr. Collins: This is the one after the war is over you are talking about now?

Mr. Nicoson: That is what he said.

Mr. Collins: I object on behalf of Pioneer Electric Company to any conversation he had with Daniel P. O'Keefe as not binding upon any respondent, copartner or the partnership itself of the Pioneer Electric Company. It does not tend to prove or disprove anything at issue, so far as their case is concerned.

Mr. Schullman: May I have a general objection, so I won't keep bobbing up, to this witness' testimony to any of his alleged conversations with anybody, unless the same relates specifically to Local 792 or any principals or agents. [167] I am making now a blanket objection so I won't have to repeat it to any of the testimony. I will renew it in the form of a motion when the witness is through, to strike out the testimony.

Trial Examiner Kent: Your objection, so far as your clients goes, may go to the line, yes.

Mr. Collins: What is the ruling on my objection?

Trial Examiner Kent: How is that?

(Testimony of Charles Spallino.)

Mr. Collins: What is the ruling on the objection of the respondent Pioneer Electric Company?

Trial Examiner Kent: I will overrule the objection.

Mr. Collins: At this time I wish, for the purpose of expediting this proceeding, to object to the entire line of questioning so far as Pioneer Electric Company is concerned. In other words, I won't renew the objection every time a question is asked.

Trial Examiner Kent: I will make the same ruling as I did in reference to Mr. Schullman's motion. Your objection may go to the line.

Mr. Collins: Very well.

Mr. Nicoson: May I have the last question and answer read?

(The record was read.)

Q. (By Mr. Nicoson): Who is Mr. Daniel P. O'Keefe?

A. Well, he is the president of the O'Keefe & Merritt. [168]

Q. Where did this conversation take place?

A. In his office?

Q. Who was present? A. Just him and I.

Q. What was said and who said it?

A. Well, he congratulated me——

Q. Will you confine your answers to what was said by each of the parties and identify the person making the statement? Don't draw a conclusion. What did Mr. O'Keefe say to you?

Mr. Garrett: One moment, please. That is objected to as irrelevant, incompetent and im-

(Testimony of Charles Spallino.)

material; not binding on any of the objecting unions Moulders, Carpenters, Stove Mounters; objected to on the ground there is no proper foundation that has been laid.

I want to call your Honor's attention, in connection with the objection, to the fact that there is no foundation showing that any one representing the objecting unions was present at this conversation; and to the further point that no one with whom any of the objecting unions made any contracts was present at this conversation.

Mr. Nicoson: I object to the objection as having come too late. The objection he now states is to the previous question, which has been answered. We are now dealing with the second question after the one to which he objects. So I, therefore, object to his objection as coming too late. [169]

Mr. Schullman: To clarify the record, I assume my blanket objection can't be too late because it is constantly in there as granted by the Trial Examiner.

Mr. Nicoson: Granted?

Mr. Schullman: I don't mean the ruling was granted, but the requirement that I repeat my objection to each question has been granted. That is, I do not have to repeat the objection to each question. I assume that was the ruling of the court, insofar as my objection is concerned.

Trial Examiner Kent: So far as your objection is concerned, yes, it went to the entire line.

(Testimony of Charles Spallino.)

Mr. Schullman: I wanted to make sure Mr. Nicoson was not objecting——

Mr. Nicoson: I am not objecting to you, Mr. Schullman.

Trial Examiner Kent: You may answer.

Mr. Garrett: Will your Honor rule on my objections? I would like to know whether you are sustaining them or overruling them. If you are overruling my objections, I would like to know whether it is on their merits or on the point raised by Mr. Nicoson that the objection is made too late.

I call your attention to the fact that we have a witness on the stand who is very hard to understand from the position in which I am sitting in the court room. That no material evidence had been given or no evidence by the witness as to the substance of the conversation at the time my objections went in.

My objections are very important to the unions which I represent, and it is important to know whether they are being ruled upon because your Honor thinks this witness has something to say that is binding on my people, has something to say that is material as to my people, or not.

Trial Examiner Kent: Well, I am not going to limit myself by giving the reasons of my ruling. But I will overrule your objection. The answer may be taken.

Mr. Nicoson: Read the question.

(The question was read.)

Mr. Collins: I object on the ground there is no foundation laid. I think we ought to have a more

(Testimony of Charles Spallino.)

definite date of the conversation, to be in a position to cross-examine and offer rebuttal evidence.

I think it is an unfair situation to leave it as it is. Mr. O'Keefe very likely talks with one or hundreds of his employees every day, and has for years. To single out this conversation, it is going to be practically an impossibility, unless we can arrive at it more certainly.

Mr. Nicoson: I would be perfectly willing if Mr. Collins wants to stipulate with me he had the same conversation with all his employees, I wouldn't care when he would put it.

Mr. Collins: Let's have it more definite. I don't care to make any stipulation about it.

Mr. Nicoson: I think if the witness is permitted to [171] testify it will be quite definite enough.

Mr. Collins: Before he starts testifying, my objection is there is no foundation laid; that is all. It doesn't require any argument between counsel here.

Trial Examiner Kent: You may answer.

The Witness: I can say that was around February of 1945. I just took office as the Five and Over Club President. I was congratulated and asked, you know,—he congratulated me and we got in a conversation, and he——

Mr. Garrett: Just a moment. Before he goes into the conversation now, I would like to have the witness on voir dire, in order to more properly establish the date.

Mr. Nicoson: Before you go into voir dire, I

(Testimony of Charles Spallino.)

would like to have the question put to the witness. I would like to have the last two questions and answers read. I think all of us lawyers have gotten the poor boy confused.

Q. (By Mr. Nicoson): Do you remember having a conversation with Mr. O'Keefe about a grievance committee? A. Yes.

Q. When did you have that conversation?

A. I would say that was around in February.

Q. Of what year? A. 1945.

Q. Where did the conversation take place?

A. In his office. [172]

Q. Who was present? A. Just him and I.

Q. What was said and who said it?

Mr. Garrett: Objected to on the ground it is incompetent, and immaterial; objected to on the ground it is not binding on any of my clients; objected to on the ground it is not purporting to be a conversation with any party or parties with whom my clients have ever had any contractual relations; objected to on the ground the foundation is insufficient.

Mr. Collins: I join in the objection on behalf of respondent, Pioneer Electric and the co-partnership members.

Mr. Nicoson: For people who like to save time this is all very interesting. I have no objection. Go ahead boys, have your fun. I can stay here as long as you can.

Mr. Collins: Just a moment.

Mr. Garrett: I cite counsel's remarks as mis-

(Testimony of Charles Spallino.)

conduct and ask it be so assigned and directed by the Trial Examiner.

Mr. Collins: I join in that request. This vitally affects my people, and runs into millions of dollars. If we are not entitled to have a fair trial and make legal objections, what are we down here for?

Trial Examiner Kent: You may answer.

Mr. Garrett. May I have a ruling on my objection, sir?

Trial Examiner Kent: Yes. That was a ruling. The ruling is that the objection is overruled. [173]

Q. (By Mr. Nicoson): What was said and who said it?

Mr. Nicoson: Let's go again, boys.

The Witness: Well, Mr. O'Keefe says——

Mr. Garrett: May I have the same objection, your Honor, since counsel——

Trial Examiner Kent: Yes.

Mr. Garrett: ——for the Board has objected to my getting a ruling on one occasion because, as he said, my objection came late.

Trial Examiner Kent: Yes.

Mr. Garrett: I would like to have the same objections entered to this repetition of his question.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: May I ask the reporter to please read the witness the question?

(The question was read.)

The Witness: Well, he congratulated me, and he says, "I know you have done well before—you

(Testimony of Charles Spallino.)

have done a swell job and you will do a job as good as you ever did.”

He said, “At this time get a very good active committee, grievance committee that won’t be afraid to straighten out things.” Well, if they can’t take care of it in the plant through their foremen, to be sure that I get all the complaints myself—the last resort—he said, “I will see they are taken care of.” That is his conversation. [174]

Q. (By Mr. Nicoson): Did you make any reply?

A. Well, I says, sure, that I would try to pick a committee in each department, appoint him. But I would like to have the membership appoint them themselves, so I didn’t want to have all of it on my own, to be responsible for picking this committee.

Q. Did anything further take place at that time?

A. No.

Q. Did you do anything as a result of that conversation?

Mr. Garrett: One moment, please. I move to strike the entire conversation as incompetent, irrelevant and immaterial.

Mr. Collins: I join in the motion.

Trial Examiner Kent: What is the purpose of this particular line?

Mr. Nicoson: I am trying to show that stemming right from the president of the O’Keefe and Merritt Corporation was a design to avoid contact with all labor organizations, and through this witness and through this employee set up a grievance pro-

(Testimony of Charles Spallino.)

cedure or committee which disregarded either the A.F.L. or the C.I.O.

I submit, your Honor, that such activity has been repeatedly held, not only by the Board, but, I think, every court in the land, that that is not within the realm of the employer's rights and constitutes unfair labor practices.

Certainly it is unfair labor practice when the employer [175] attempts by any means to undercut the C.I.O. or the A.F.L., especially at a time when the A.F.L., or rather the C.I.O., has just won an election.

Mr. Garrett: If your Honor please, may I be heard for a moment? I should like to call your Honor's attention to one point, namely, this witness places and has placed twice this conversation as being in time in the month of February, 1945.

Trial Examiner Kent: Yes, that is the reason I asked the question.

Mr. Collins: May it please the court,—

Trial Examiner Kent: In any event, though, I think it is admissible as background testimony.

Mr. Nicoson: I would not be content to so limit it, your Honor.

Mr. Collins: Mr. Trial Examiner, I should like to point out to Mr. Nicoson I believe he is being led into an error here. That he will probably develop from this witness this man was the president of the Five and Over Club, and the Five and Over Club has had a grievance machinery since 1935.

It is natural for this man to confer with anybody

(Testimony of Charles Spallino.)

about grievances; that is part of his job as president.

Mr. Nicoson: I thank counsel for his kind remarks. At the moment I don't think I am being misled.

Trial Examiner Kent: You may proceed. [176]

Mr. Nicoson: Will you read the question?

(The question was read.)

The Witness: Yes.

Q. (By Mr. Nicoson): What did you do?

A. I went in the plant and started from department to department and asked the fellows who they would like to have as their grievance committee in that department. I asked the members, and I had them picked according to that.

Q. Directing your attention to on or about October 1, 1945, did you and Mr. Levascos have a conversation with Mr. Cecil Collins?

A. Yes, we did.

Mr. Garrett: One moment. May that answer go out for the purpose of an objection, your Honor?

Trial Examiner Kent: Yes.

Mr. Garrett: May I have the question re-read?

Trial Examiner Kent: Read the question.

(The question was read.)

Mr. Garrett: I object to that question as leading.

Mr. Collins: I join in the objection and move the answer be stricken.

Trial Examiner Kent: I think it is purely a foundation question. I will instruct the witness not

(Testimony of Charles Spallino.)

to answer other than to answer yes or no. I think it is purely a foundation question.

Mr. Garrett: I should like to point out, however, in [177] framing the question——

Trial Examiner Kent: I would state if the witness or any witness were in the habit of answering questions of that type and going into a long-winded explanation, I think the objection might be warranted. I don't think this witness is. I think that he will come through with a brief answer.

Mr. Garrett: My objection, I don't like your Honor to misconstrue it, is based upon the thought that in framing the question in that way counsel is himself laying the foundation, that is, of relieving or attempting to relieve the witness of the obligation of establishing, not only place and persons present, but time. And so that question is leading in that it, of itself, establishes the time as to which the witness is to testify. That should be brought out by the witness.

Trial Examiner Kent: There may be merit there. I will reserve my ruling. I will ask counsel to re-frame the question.

Q. (By Mr. Nicoson): Did you and Mr. Levascos at any time have a conversation with Mr. Cecil Collins? A. Yes.

Q. Mr. Cecil W. Collins, attorney for O'Keefe and Merritt? A. Yes.

Q. Counsel that sits opposite me?

A. Yes.

(Testimony of Charles Spallino.)

Q. Where did this conversation take place?

A. In his office.

Q. Who was present?

A. Mr. Levascos and myself and Cecil Collins.

Q. When did it occur?

A. Well, it was around October.

Q. Would you say it was the first, middle, or latter part of October?

A. The early part of October.

Q. Where is Mr. Collins' office located?

A. It is upstairs in the front office.

Q. About what time of day did this occur?

A. I am not so sure. It was early in the morning, somewhere around—before noon.

Q. Was it during working hours?

A. Yes, during working hours.

Q. I believe you testified that three of you, Collins, Levascos and yourself were present?

A. Yes, sir.

Trial Examiner Kent: Has Mr. Levascos' job been identified?

Mr. Nicoson: He said he was an expediter for O'Keefe and Merritt.

Trial Examiner Kent: Oh, yes. I remember now.

Q. (By Mr. Nicoson): What was said during the course of that meeting and who said it? [179]

Mr. Garrett: Objected to as incompetent, irrelevant, and immaterial; not binding upon the Stove Mounters, Moulders, or Carpenters; objected to on the ground no proper foundation has been

(Testimony of Charles Spallino.)

laid; objected to on the ground that it does not purport to be a conversation with any party representing anyone with whom these unions have had contractual relations.

Mr. Collins: I join in the objection, so far as Pioneer Electric is concerned.

Mr. Nicoson: I can only say, if the witness is permitted to answer, the objection of Mr. Garrett will be rendered obviously inappropriate.

Mr. Garrett: If your Honor please, it is my understanding and these objections are not made capriciously, because the purpose of requiring foundation, the purpose of requiring proof that a person be charged in a conversation is obviously to give them an opportunity to cross-examine and rebut. I don't possibly see how any testimony coming from this man could show it could be binding on my clients if there isn't first a foundation showing that some of my clients were there at the conversation, or at least knew about it, or knew it was going to take place.

Trial Examiner Kent: Well, of course, the testimony could be admissible even though it wasn't fundamentally and primarily binding upon your client. He may answer.

Mr. Garrett: Isn't it usual in those circumstances [180] to rule that it is not binding upon the objecting party, who is shown by the foundation not to be bound by the conversation, or in a position to rebut the implications of it? Wouldn't it be therefore suitable also to hold it couldn't be binding

(Testimony of Charles Spallino.)

to either the objecting parties or their contract which is sought to be attacked in this line of testimony. I haven't any objection to the effect of this man's conversation, insofar as it relates to the Pioneer Electric Company.

Mr. Collins: But I do.

Mr. Garrett: That is for them to object to. But I insist that none of these conversations this man has been permitted to testify to should be taken as binding upon any of my clients who are objecting because the conversations aren't had in their presence.

Mr. Collins: My objection on behalf of the Pioneer Electric Company is along the same line of reasoning. How could Pioneer possibly refute this testimony. They had no representatives there. They are under no duty to come in under—

Mr. Tyre: Does Mr. Collins now represent he was not attorney for the Pioneer Electric at that time, or agent?

Mr. Collins: If you are referring to October 1, 1945,—

Trial Examiner Kent: I was wondering if, from this testimony, you have another position.

Mr. Collins: What do you mean? [181]

Trial Examiner Kent: With the O'Keefe and Merritt or the Pioneer, other than its counsel.

Mr. Collins: Nothing.

Trial Examiner Kent: I noticed the placing of an office in the personnel department.

Mr. Collins: I have been with O'Keefe and Mer-

(Testimony of Charles Spallino.)

ritt for approximately 19 years. I have had a lot of different jobs around there. Ever since I have been practicing law I haven't been anything but the lawyer, that I recall. I represent a number of clients besides O'Keefe and Merritt. Occasionally I might be retained by the Pioneer Electric Company for such as this. [182]

Trial Examiner Kent: I thought possibly you might be an executive officer with O'Keefe and Merritt.

Mr. Collins: I am certain I wasn't specifically commissioned on October 1, 1945, on behalf of the Pioneer Electric Company concerning any C.I.O. activities or A. F. of L. activities, or anything of that nature.

Trial Examiner Kent: You may answer. I will overrule the objection.

Q. (By Mr. Nicoson): Do you remember the question?

A. I think it is the conversation that took place in Mr. Collins' office between Levascos and myself. Well, prior to that, before we went to the office—can I get there or do I start—

Q. Tell me what happened in the office.

A. Yes. In the office we asked Collins what he knew about the shop going union.

He said, "Yes." He says, "We are going to have to go union. Naturally, A.F.L. is what we want."

Q. Who said that? A. Collins.

Mr. Garrett: What did he say? I couldn't hear that.

(Testimony of Charles Spallino.)

The Witness: What did Collins say?

Mr. Garrett: May I have the answer read up to that point?

Trial Examiner Kent: Yes. [183]

(The answer was read by the reporter.)

Q. (By Mr. Nicoson): Was there anything further said at that time? If so, who said it?

A. He also said the C.I.O. is a radical organization and we couldn't do business with them, and the thing for us to do, Johnny and I, is to get a good start. He is already in touch with Roberts of the A.F.L., he had things going our way. That—well, he had it fixed. We could get a certificate or whatever you call it. What do you call that, now? A charter, from the A.F.L. It was all figured out with Roberts. We was going to meet Roberts at a later date.

In the meantime, Johnny and I was supposed to go in the plant and sign up 25, 50——

Mr. Collins: Just a moment. I object to the conclusions being drawn from this witness. I want him to relate the testimony, what I said and what he said; what the conversations were.

Trial Examiner Kent: Yes. Tell what was said, not what you think somebody meant.

The Witness: Did I use that word "think"?

Mr. Nicoson: I don't think so.

Trial Examiner Kent: "We were supposed——"

Mr. Nicoson: As far as this witness' testimony occurring, at least, the record will indicate, I am quite sure, he is attempting to repeat what was

(Testimony of Charles Spallino.)

said at that time, and has [184] identified the speaker.

Trial Examiner Kent: I recollect his saying, "We were supposed——"

Read his answer. Maybe I am mistaken.

(The answer was read by the reporter.)

Trial Examiner Kent: Yes.

The Witness: That is what Johnny and I was supposed to do. That was our job to do.

Q. (By Mr. Nicoson): Is that what he said? Is that what Mr. Collins said at that time?

A. "You can go in the plant——"

Q. Answer me. Is that what he said or were you telling your reactions and conclusions from the meeting? I don't want your conclusions. I want what was said, and by whom.

A. Well, Collins says we were on the unfair list with A.F.L. for many years, which we had been on the unfair list. And we had to get off that list. So he already had talked to Roberts, and Roberts was going to meet us at a later date.

Q. Is that what he said?

A. That is what Collins said.

Q. Go ahead.

A. And then—well, shall I repeat that now about the C.I.O.?

Trial Examiner Kent: Not if you have already said it. [185]

The Witness: I already said it. So he advised that Johnny and I would go into the plant and sign

(Testimony of Charles Spallino.)

up 50 members for the A.F.L. In the manner he wanted the 50 is to get 25——

Mr. Collins: Just a moment, Mr. Spallino. I again ask the Trial Examiner to caution this witness to state what was said. Not what he was advised or what he thought, but what was said.

Trial Examiner Kent: Yes. Confine yourself—

Q. (By Mr. Nicoson): What did he say?

A. Collins said, "You get 25 Five and Over members, that is, the latest members, the new ones. And 25 non-members from the plant. Pick the weak ones you can lead, that you and Johnny—appoint yourself at the head and it will be O.K. Just get 50 members."

Mr. Schullman: Pardon me.

Q. (By Mr. Nicoson): Who is Johnny?

A. Johnny Levascos.

Mr. Schullman: May I ask the reporter to read the last part? Was it 25 members and 25 non-members?

The Witness: Of the Five and Over——

Mr. Nicoson: Let's have the question and answer read, or that portion of it read.

Mr. Schullman: I got the answer in the meantime.

Mr. Nicoson: Your request is withdrawn now, Mr. Schullman? [186]

Mr. Schullman: Yes. Thank you.

Q. (By Mr. Nicoson): Was anything further said during that time?

(Testimony of Charles Spallino.)

A. "Well, will they be satisfied with 25 each"?

Q. Who said that?

A. I said. He says, "Well,——"

Mr. Garrett: I draw your attention to the fact that is the first time this witness has identified the speaker speaking any of the statements.

Mr. Nicoson: Maybe that is the first chance he had. How do you know?

The Witness: I didn't want to get mixed up in it, because I was president——

Mr. Nicoson: Never mind. Don't you worry. I am having enough trouble with it.

Is there a question pending before the witness?

The Reporter: No.

Q. (By Mr. Nicoson): You mentioned a Mr. Roberts. Did Mr. Collins identify Mr. Roberts to you?

Mr. Garrett: That is objected to as leading certainly.

Q. (By Mr. Nicoson): What did Mr. Collins say about Mr. Roberts, if anything?

A. That we would meet him very shortly—we would get—he would get in touch with us, with Johnny and I.

Q. Did anything further transpire at that time?

A. No.

Q. Nothing further was said that you recall?

A. We went down to our business——

Q. Wait a minute. Let's take it step by step. Was anything further said at that time?

Mr. Garrett: Objected to as already asked and

(Testimony of Charles Spallino.)

answered. He already testified there was nothing further said.

Mr. Nicoson: May I have the last two questions and answers read?

(The record was read.)

Mr. Nicoson: I submit the question was not answered.

Mr. Garrett: He was asked if anything transpired, anything further. He said, "no."

Mr. Nicoson: I asked if anything was said and he didn't say that.

Q. (By Mr. Nicoson): I now ask you if anything further was said at that time.

Mr. Garrett: Objected to as already asked and answered.

Trial Examiner Kent: He may answer.

The Witness: Where was I?

(The question was read.)

The Witness: Well, there wasn't anything else said, but we went on downstairs.

Q. (By Mr. Nicoson): All right.

A. That I can recall, anyway. [188]

Q. Did you thereafter see Mr. Roberts?

A. Yes.

Q. How long after that meeting did you see Mr. Roberts?

A. I would say within two or three days.

Q. Where did you see him?

A. In the front office at the telephone.

Q. Will you tell us how you came to see him at that time?

A. Yes, we were called—Johnny came by and

(Testimony of Charles Spallino.)

picked me up on the way going up to the front office.

Q. Is that Johnny Levascos?

A. Johnny Levascos.

Q. You and Johnny, as I understand it, went to the front office.

A. Yes.

Q. And there you found Mr. Roberts?

A. Mr. Roberts.

Q. Is that correct?

A. Yes.

Q. Did you have a conversation with Mr. Roberts at that time?

A. Yes, we did.

Q. Was anyone else present besides the three of you, Levascos, yourself and Mr. Roberts?

A. No, there was just us three.

Q. And what did you talk about?

A. Well, we talked about—we had already signed up a few [189] to the A.F.L. and we—well, Johnny asked about the scale, something about the wage scale and different parts of the contract that the A.F.L. had. And then Mr. Roberts and Johnny and I walked across the street where Mr. Roberts had his car. There is when Mr. Roberts handed us some of these application blanks to sign up A.F.L. members.

Mr. Nicoson: Please mark this for identification.

(The document referred to was marked as Board's Exhibit No. 7, for identification.)

Q. (By Mr. Nicoson): I hand you an instrument which, for the purpose of identification has

(Testimony of Charles Spallino.)

been marked Board's Exhibit 7. I ask you to examine it and state, if you know, what it is.

A. That is a membership application that was handed—well, to me personally.

Q. Membership in regard to what?

A. This is an International Stove Mounters.

Q. Have you ever seen that instrument before?

A. Yes.

Q. Where did you get it?

A. From Mr. Roberts.

Q. You received just the one, or more?

A. Oh, I received about a hundred, I would say.

Q. Would you describe them as to their fastenings, if any?

A. They are in a pad with a cardboard on the back. [190]

Mr. Nicoson: I offer this in evidence.

Mr. Schullman: You don't have copies; do you?

Mr. Nicoson: Yes, I have plenty of these.

Mr. Schullman: At this time we object to the introduction of this in evidence. The reason is we are, of course, specifically—our blanket exception goes to the testimony. We are objection to the offering in evidence of Board's Exhibit 7 for the reason that clearly on the face of it, insofar as it attempts to bind our clients in this hearing—I presume the ruling is consistent with the other rulings insofar as my clients are concerned; the ruling thereon is reserved.

(Testimony of Charles Spallino.)

Clearly, on the face, it doesn't refer to any of the Painters, Painters Union. I am not thereby indicating, incidentally, there is anything wrong with the circulation of this application by the Stove Mounters.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked as Board's Exhibit No. 7, for identification, was received in evidence.) [191]

BOARD'S EXHIBIT No. 7

MEMBERSHIP APPLICATION

Stove Mounters International Union of
North America

Affiliated A. F. of L., M. T. D. U. L. T. D.

I hereby accept membership in the Stove Mounters' International Union of North America, and of my own free will, hereby authorize the Stove Mounters' International Union of North America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rate of pay, wages, hours of employment or other conditions of employment.

Local No. Date 19

Shop Department

Name

Address

First week's dues (check one) 40c [] 25c [].

(Initiation fee and one week's dues must accompany this application.)

(Over)

(Testimony of Charles Spallino.)

Member's Name

Witnessed By

Date.....19.....

Member's Beneficiary

Member's Age.....

[Endorsed]: Filed March 13, 1946.

Mr. Collins: I object to the introduction of this in evidence upon the ground neither Mr. Spallino or Mr. Roberts or Mr. Levascos were at that time working for Pioneer Electric or partners; not binding upon the Pioneer.

Trial Examiner Kent: I will confirm my prior ruling. It may be received.

Q. (By Mr. Nicoson): I believe you testified that Mr. Roberts gave you about a hundred of these. A. Yes, sir.

Q. At that time? A. Yes.

Q. Did you have any further conversation with Mr. Roberts?

A. Well, at that time when he handed us these applications he was going on a trip to Frisco.

Q. Is that what he said?

A. That is what he said.

Q. Remember, you have to say what the man said, not what you thought he said.

A. That is what he said.

Q. O.K. Go ahead.

A. He would be back within three days, three or four days, and for us to have at least 50 of them signed up for him so that he could start for this charter.

(Testimony of Charles Spallino.)

Mr. Garrett: May I have that last sentence read, please?

(The answer was read.)

Trial Examiner Kent: We will take a recess for about five minutes.

(A short recess was taken.)

Trial Examiner Kent: You may proceed.

Mr. Schullman: At this time, before any further questions, may I move we have an early adjournment just for this one day, [192] based upon the fact we do have a multiplicity of matters we expected to take care of today, even though we didn't have too much hope of a continuance, we thought there might be an early adjournment. If we adjourn approximately at 4:30 we may be able to take advantage of that time. I understand from opposing counsel there is no objection to that.

Mr. Collins: Not so far as I am concerned.

Mr. Nicoson: No objection.

Mr. Garrett: No objection.

Mr. Schullman: May I at this time associate with me, in behalf of Local 792, Mr. Smith, who may alternate with me on this matter.

Trial Examiner Kent: The record may so show. What is your first name, Mr. Smith?

Mr. Smith: David S. Smith.

Trial Examiner Kent: Well, in view of counsel's statement, we will adjourn then at 4:30.

Q. (By Mr. Nicoson): I believe, Mr. Spallino, you had testified just prior to the recess that Mr. Roberts had given you approximately a hundred of

(Testimony of Charles Spallino.)

those cards or slips which were marked Board's Exhibit 7. That was your testimony; wasn't it?

A. Yes. [193]

Q. What did you do with those cards and slips, if anything?

A. Well, I met with John Levascos and went right to work on the membership.

Q. What do you mean you went right to work on the membership?

A. Well, we went right in the plant and signed up who we could.

Q. Describe what you did.

A. Well, I at that time—I don't know whether it is right to bring it out in that way.

Q. Just describe what you did.

A. Well, I was—oh yes, I was signing up the turkeys for Thanksgiving, and I was doing both jobs of looking up my members of the Five and Over, and signing up for the A. F. of L.

Q. What did you do about signing up for the A. F. of L., as you put it?

A. Well, I approached a man and asked him, told him that we had to join the union, and we had to join the A. F. of L., that is the Company wanted the A. F. of L., but at election time they could vote the way they wanted. That is the way I brought it up to them, and they signed—well I signed about thirty-eight, about thirty-eight or forty, before we met Mr. Roberts again.

(Testimony of Charles Spallino.)

Q. Did your activities take you into any particular portion [194] of the plant?

A. Well, all throughout the plant.

Q. Did you in the course of these activities encounter any of the foremen? A. Yes.

Q. Did you have any conversation with any of the foremen about what you were doing?

A. Well, I did with one that was I working for.

Q. Who was that?

A. That was Frank Vacquero.

Q. What did you and Frank talk about?

A. Well, I told him that I was given this job to sign up members for the A. F. of L., and I was signing up for those turkeys, and it would take most of my time away from my machine.

Q. What did he have to say about that if anything?

A. Well, he said that was all right as long as it was all right by everybody else.

Q. About how much time did you devote every day to this particular activity?

A. Oh, from two to three hours each day.

Q. And how long all told were you engaged in the signing up of people?

A. A little better than a month.

Q. Let's go back just a little bit. The conversation [195] at the time you and Mr. Levascos saw Mr. Collins in his office; how long were you in Mr. Collins' office at that time?

A. At which time may I ask?

Q. At the time you and Levascos had the con-

(Testimony of Charles Spallino.)

versation in Mr. Collins' office with Mr. Collins which you testified about. A. How long?

Q. Yes.

A. Oh, I would say from a half hour to forty-five minutes.

Q. And this conversation that you had with Mr. Roberts, was that during working hours or off hours? A. It was, yes.

Q. It was what?

A. During working hours.

Q. How long did that conversation take place?

A. From thirty-five to forty-five minutes.

Q. Now, the thirty to forty-five minutes with Mr. Collins and the thirty to forty-five minutes with Mr. Roberts, was that deducted from your pay? A. No.

Q. The time which you have testified that you spent going around getting signatures as being between one and two hours a day for a period of about a month, was any deduction made for that time out of our pay? [196]

A. No.

Mr. Tyre: I think he said two or three hours, didn't he?

Mr. Nicoson: Well, whatever it was that you spent; if I misquoted you the record will show what you said.

Q. (By Mr. Nicoson): In other words, is it or is it not your testimony that no deduction was made from your pay for any of those activities which you have related about the signing up of the cards and

(Testimony of Charles Spallino.)

visiting Roberts and meeting with Mr. Collins, is that correct? A. That is right.

Q. And did you again see Mr. Roberts?

A. Yes.

Q. When did you next see him?

A. It was the following week, around Wednesday I would say of the following week from the time that he had left for Frisco.

Q. Where did you see him?

A. This time it was at the employees' entrance.

Q. And how did you come to meet him there?

A. Well, the guard said that there was a fellow out there looking for me, and Johnny Levascos was notified the same way and we both went out.

Q. You went out there and whom did you find?

A. Mr. Roberts. [197]

Q. Did you have a conversation with him at that time? A. Yes, we walked——

Q. Wait just a minute. Was there anyone there besides Levascos, Roberts and yourself?

A. That is in the conversation?

Q. Yes. A. No.

Q. What time of the day did the conversation take place?

Mr. Collins: Just a moment Mr. Spallino. I wish at this time to renew my objection to this entire line of testimony, in behalf of the Pioneer Electric Company, on the ground it is not binding upon them.

Trial Examiner Kent: I judge the objection goes to the weight of the testimony rather than any-

(Testimony of Charles Spallino.)

thing else. You may go into it on cross-examination. It may be the custom out there for the guard to call people away from work. I don't know.

Mr. Collins: I am just interposing these objections periodically. I assume, Mr. Examiner, that you have noticed that I made a general objection to anything that does not pertain to the Pioneer Electric Company. There are two objections besides I want to make. As far as this testimony is concerned, I am objecting on the ground it is not binding upon the Pioneer, they were not operating the factory at that time. At this time they had a small part of it where [198] they were making generators. At this time they were not making gas ranges, as the evidence will later show.

Trial Examiner Kent: The record will remain. You may proceed.

Mr. Nicoson: Will you read the record please?

(The question was read by the reporter.)

The Witness: Am I to answer that?

Trial Examiner Kent: Yes, you may answer that.

Q. (By Mr. Nicoson): Yes.

A. All I would say is that it was in the afternoon.

Q. Was it during working hours or off working hours?

A. It was during working hours.

Q. What was the conversation and who made the statements?

A. Well, the conversation was that we had——

Q. Who said it?

(Testimony of Charles Spallino.)

A. Mr. Roberts, how many members we had and I told him that I had about thirty-eight already signed up, that I would have more later, and well, he started reading out some contracts and scales that he was almost finished with, for the cappers and saddlers and so forth at the other stove factories.

Mr. Collins: I move this testimony be stricken upon the ground that it is not binding on either the Pioneer or the O'Keefe and Merritt Company. Mr. Spallino is not an authorized agent of either company, and certainly Mr. Roberts is not.

Trial Examiner Kent: Read that answer, Mr. Reporter.

Mr. Collins: There is no responsible official of the Pioneer or of the O'Keefe and Merritt Company present at this conversation. [199]

(The answer was read by the reporter.)

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): What further was said and who made the statement?

A. Well, Mr. Roberts said that he would be back within a couple of days, and he would be after the rest of the membership, and he would work on that charter as fast as he could.

Q. Did you give him any of the signed slips?

A. Not at that time.

Q. Did you later meet with Mr. Roberts?

A. Yes.

Q. When did you next meet with Mr. Roberts?

A. I am sure it was within a couple of days.

Q. Where did you meet with him?

(Testimony of Charles Spallino.)

A. This time we met him in front, in the front office.

Q. In front of what?

A. In the front office, by the telephone operators.

Q. Of O'Keefe and Merritt?

A. O'Keefe and Merritt.

Q. Who was present?

A. Johnny Levascos and myself.

Q. And Mr. Roberts? A. And Mr. Roberts.

Q. Did you have a conversation?

A. Yes, we——

Q. What time of the day did it take place? [200]

A. I would say that was in the afternoon, too.

Q. Was it during working hours or off working hours? A. During working hours.

Q. What was the conversation and who made the statement?

A. Well, Mr. Roberts says that we needed some more. Well, he had this 38, and if I could get him at least 16 more right away that he would go out and start this charter and he would have it within a couple of, or two or three days, he would have the charter for us.

Q. As a result of that statment did you do anything?

A. Yes. I went into the Refrigeration Department with these applications and I presented them to a fellow in there whose name is Frank Doyle.

Mr. Garrett: What is that name, please?

The Witness: Frank Doyle and William T. Bennett. I told them that I needed these 16 signatures

(Testimony of Charles Spallino.)

right away and that Mr. Roberts was waiting for them and we would get this charter going right away.

Q. (By Mr. Nicoson): Who is Mr. Doyle?

A. He is the assistant clerk at the service department.

Q. Who is Mr. Bennett?

A. He is, as far as I know, he is the foreman.

Q. What happened after that?

A. Well, they brought me back the 16 applications and I returned them. [201]

Q. Who brought them back to you?

A. Frank Doyle.

Q. How did he get them?

A. Well, he went into the department there.

Mr. Garrett: Objected to as calling for hearsay.

Mr. Nicoson: What is that?

Mr. Garrett: Objected to as calling for hearsay.

The question was how did he get them.

Trial Examiner Kent: Yes, I think you better lay a foundation.

Q. (By Mr. Nicoson): How did he get the applications?

Mr. Garrett: Objected to as calling for hearsay.

Mr. Nicoson: Do you know how he got the applications?

Trial Examiner Kent: If you know.

The Witness: Yes, he went to the——

Mr. Garrett: If your Honor please, that is not proper testimony——

Mr. Nicoson: Withdraw the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Do you know how he got the application slips?

A. I gave them to him.

Q. Answer yes or no, do you know how he got them? A. Yes.

Q. How did he get them?

A. I gave them to him. [202]

Q. Do you know what he did with them?

Mr. Garrett: Objected to as no proper foundation laid.

Q. (By Mr. Nicoson): Do you know what he did with them?

A. Yes, I was waiting for him.

Mr. Garrett: Objected to as calling for hearsay, obviously.

Trial Examiner Kent: Not necessarily. I think you better lay a better foundation for the question.

Q. (By Mr. Nicoson): Did you see what he did with them? A. Yes.

Q. What did you see?

A. He went to the men in the service department and had them sign up.

Mr. Garrett: Who went to the men?

Q. (By Mr. Nicoson): Yes. Who went to the men? A. Frank Doyle.

Q. Was that in the presence of Mr. Bennett?

A. Yes.

Q. And do you know then thereafter what Mr. Doyle did with those slips?

A. He returned them to me.

(Testimony of Charles Spallino.)

Q. I believe you used the terms service and refrigeration. Are they one and the same?

A. Yes.

Q. How many slips did you say were returned to you by Mr. Doyle, if you did? [203]

A. I would say 16, 15, or 16.

Q. Were they all signed? A. Yes.

Q. Did you do anything with the slips?

A. I did.

Q. What did you do with them?

A. I handed them to Mr. Roberts.

Q. Was he there at the time?

A. He was waiting in front.

Q. Was he with you in the service department or the refrigerator department, as you fellows used to call it? A. He was not.

Q. After you received the 15 or 16 signed slips, describe what you did with them?

A. I handed them to Mr. Roberts.

Q. Where was Mr. Roberts?

A. He was waiting in the front office, that is, the telephone operators' office.

Q. Was anyone with him?

A. Johnny Levascos was there waiting.

Q. Did Mr. Levascos go with you into the service or refrigeration department?

A. He did not.

Q. What further transpired at that time?

A. I don't remember correctly if we went upstairs at that [204] time. Soon after that we went upstairs. There is a little room upstairs that Johnny

(Testimony of Charles Spallino.)

uses a whole lot, there is a telephone in there, and I am pretty sure that is the time that I handed him these. The full amount I think was about 54 or 55 applications, and they were all signed by me on the back of the slip.

Q. What do you mean, they were signed by you on the back of the slip?

A. Where it says "witnessed by."

Q. Were there any other signatures on the slips?

A. On the front part, yes, sir, there was the signature of the applicant.

Q. And you signed as a witness, is that right?

A. I signed as a witness.

Q. During the time that you were talking to Mr. Roberts or you were in the service department with these slips while they were being signed, did you see any foreman around or other officers of the O'Keefe and Merritt Company?

A. Well, I passed by the office there and there is Cole's office which he is the head man in the service department. They all saw me there.

Q. When the three of you, Mr. Roberts, Levascos and yourself went to Mr. Levascos' office or wherever you choose to term it, did you see any foreman or other officers of the O'Keefe and Merritt Company while you were going there? [205]

Mr. Collins: Just a moment. I object to the assumption of a fact which is not in evidence. There is no evidence to show that Mr. Levascos has an office. He is an expeditor. His office would be one of the aisles up and down the factory.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Did you or did you not, Mr. Spallino, testify that Mr. Levascos had a room in which here was a telephone and a desk or table?

A. That isn't really an office. It is sort of a torture room, you might call it.

Q. Never mind what you might call it. Let's find out just what it is. It is a room with a desk and a telephone?

A. That is right. [206]

Q. That is the place you went to with Mr. Roberts and Mr. Levascos?

A. That is right?

Q. In going to that place did you see any of the foremen or any of the other officers of O'Keefe & Merritt?

A. It is unavoidable to run into——

Q. Answer me yes or no.

Trial Examiner Kent: Did you?

The Witness: Not that I can recall passing, my foreman, at that particular time.

Q. (By Mr. Nicoson): Did you see Mr. Daniel P. O'Keefe, for example?

Mr. Collins: I object to this as entirely incompetent, irrelevant and immaterial; upon the further ground it is leading and suggestive. It would be impossible for this man to walk through the factory without seeing foremen and superintendents around the three or five, I guess ten acres there. They can walk around and see people wherever they go. That doesn't mean there is anything suspicious or strange about his seeing anyone.

I object to the line. It doesn't tend to prove or disprove any of the issues in this case.

(Testimony of Charles Spallino.)

Mr. Nicoson: Would counsel also state it was with equal facilities the foremen and other representatives of management could see Mr. Roberts and Spallino and Levascos while [207] they were doing these little chores?

Mr. Collins: I made a legal objection. I will submit to the ruling of the court. I don't intend to get into any altercation with counsel on either side.

(The question was read.)

Mr. Schullman: Your Honor, I was going to say it is obviously an improper question. "Did you see President Truman?" for example, or John Smith, for example. I think it is not only a leading type of question—some leading questions are permissible——

Mr. Collins: It is the type of leading question that can't be cured.

Trial Examiner Kent: I will sustain the objection.

Mr. Collins: It is the type of leading question that can't be cured by the sustaining of the objection, if the Trial Examiner please.

Mr. Schullman: It is the kind of a question that counsel is usually admonished not to ask. As stated, it doesn't cure the question.

Mr. Nicoson: The witness testified he didn't see any foremen. Now I am trying to find out if he saw anyone else in the higher management. Certainly, I have a right to direct my question to that. I first asked him if he saw any foremen or others of the higher management. Those were not [208] my exact

(Testimony of Charles Spallino.)

words. That is the purport of it. His answer to that was he did not see any foremen. I want to find out if he saw any other higher management than the foremen. I certainly have a right to inquire into that.

Trial Examiner Kent: I think, as to that question, then if the question is asked in good faith to refresh a witness' recollection, that it is proper, after he has exhausted his recollection.

Mr. Collins: For the purpose of the record, I now wish to cite the statement of counsel for the Board as misconduct. He has now, by the colloquy, thoroughly coached the witness as to what to testify to from now on.

Mr. Nicoson: The remedy for that is always in the hands of counsel for the other side. He can always have the witness excused any time he thinks I am going to coach him.

Trial Examiner Kent: In view of our understanding to adjourn at 4:30, I think we will adjourn at this time.

(Whereupon, at 4:30 o'clock p.m. Wednesday, March 13, 1946, an adjournment was taken until Thursday, March 14, 1946, at 10:00 o'clock a.m.) [209]

Thursday, March 14, 1946

10:30 o'Clock A.M.

Trial Examiner Kent: You might proceed.

Mr. Nicoson: At this time, your Honor, I would like to propose a stipulation.

It is hereby stipulated by and between the parties that the United Steelworkers of America, Stove Division, Local 1981, C.I.O.; Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with the American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters; United Brotherhood of Carpenters & Joiners of America, affiliated with the American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, parties to the contract, are labor organizations within the meaning of the National Labor Relations Act.

May I now amend the proposed stipulation to make it read International Moulders & Foundry

Workers Union of North America, Local 374, instead of 376, as I read it a while ago? [214]

Mr. Garrett: So stipulated.

Mr. Tyre: So stipulated.

Mr. Schullman: So stipulated.

Mr. Collins: So stipulated.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: Mr. Spallino.

Mr. Tyre: Before we proceed with Mr. Spallino, I have a motion to offer to the Examiner at this time. There was some discussion yesterday, I believe, on the record by Mr. Collins as to whether or not the Steelworkers have a right to participate in this proceeding to the extent that they would be permitted to enter into stipulations or their signature would be required for stipulations. The Examiner, I do not think, made a direct ruling on it. In my own mind I have no question but what we are a party to this proceeding by the fact that we are the charging union. However, so that there may be no question about it, I wish at this time to file a motion for intervention and I hand the Trial Examiner the original and three copies of this in accordance with the rules, and I hand a copy of the motion to each of the counsel present.

Mr. Schullman: If I may comment, the only objection I have to the motion is this: I think it is a superfluity. I agree with counsel that being the moving parties, they would be the intervenors. They are the moving party, and no intervention is necessary, except for technical reasons. I think [215] it

sort of puts a peculiar situation having them be both the moving party and the intervenor.

Trial Examiner Kent: I think Mr. Schullman's answer is correct. I don't think there is any necessity for you to formally intervene, but you may participate and take part in the proceedings generally.

Mr. Tyre: I would like to state this, Mr. Examiner, the rules and regulations do not expressly make the charging union a party.

Trial Examiner Kent: No, but the practice of the Board has been, however, to permit the representatives or attorneys for the charging party to participate in the proceeding as a party. Therefore, I do not think there is any necessity for formal motion, and I will rule that you may participate.

Mr. Schullman: I think we can stipulate that they may participate. I don't know that that requires intervention.

Mr. Tyre: And our signature will be required or at least our consent will be required to any stipulation during the proceedings?

Mr. Collins: Mr. Examiner——

Trial Examiner Kent: Well, I don't know that I would go that far. I think that the Board, I think the counsel for the Board has the power to enter into certain stipulations with any of the parties.

Mr. Collins: Mr. Trial Examiner,—— [216]

Trial Examiner Kent: Without getting the consent of all the others. The Board has a primary interest here; as I see this type of proceedings, it is very much like an ex rel. proceeding where the attorney general appears on behalf of some member

of the public. In that type of proceeding whoever is conducting the case for the state or the government in that type of proceeding I think has the authority to permit the complainant to participate or otherwise as he sees fit, and I suppose our practice would be substantially the same as that. And it is the general policy and practice in the Board's hearings to permit the charging party to participate and examine witnesses and participate generally. It might be a danger to permit any of the parties to insist upon joining in every stipulation, because I do think that counsel for the Board might have discretion to enter into certain stipulations with any party involved in the case, irrespective of whether or not some of the other parties might object. They, of course, would be free to state their objections, and the Board, assuming that the Trial Examiner for the sake of argument admitted that sort of a stipulation, the objections would be in the record. The Board might very well see fit to set aside the ruling of the Trial Examiner and not accept the stipulation.

Mr. Tyre: All I would seek, in any event, is that in so far as the hearing portion of this proceeding is concerned, [217] is that I be given the same rights as any of the other parties.

Trial Examiner Kent: Yes, I think that is our general practice. I don't think you need to be apprehensive about that.

Mr. Collins: Mr. Trial Examiner, at this time, so I won't have to object to it from time to time during the proceedings, I wish to enter a general

objection to the attorney for the Steelworkers participating in this proceeding in any manner other than to consult and advise with Board's attorney. We are not down here being persecuted and this is a legal proceeding. The Board is in charge of the investigation of this charge. To allow the charging party to be a party to this proceeding would be like allowing someone from the Los Angeles Times or some labor papers to come down here and cross-examine my witnesses and enter into stipulations.

Trial Examiner Kent: Well, I think this: I think that there is an obvious identity of interest between the Board's case and the charging organization's case. In cases where the charging party's attorney does participate, cross-examination should be on new matter and not on matter already covered by the Board's examination or cross-examination. That is, on the grounds of fairness in saving time.

Mr. Schullman: When I said, your Honor, I personally have no objection for my clients, I understand the other counsel do, and they have valid reasons.

I may say, historically, in this type of proceeding, I think we were the first in this kind of proceeding in the country, when it first started. We were not permitted—we were the charging party. We were only permitted to enter here as *amici curiae*.

At that time it was developed that a complaint case, following upon a charge issued by the person, has, as your Honor indicated, assuming it was an ordinary state forum, it would be sort of a quasi-governmental proceeding whereby the charging

party is the informant. In that case we couldn't proceed. We had to be *amici curiae*. As far as we are personally concerned, we have no objection.

Mr. Nicoson: Mr. Examiner, purely in the interest of the technical niceties of the thing, I disagree with Mr. Schullman, first, upon the statement that the C.I.O. is the moving party. The C.I.O. is not the moving party. It is the charging party. The moving party in this proceeding is the Government of the United States, the National Labor Relations Board.

Secondly, I disagree with your Honor that this is in the nature of an *ex rel.* proceeding. It certainly is not. It is a proceeding authorized by the Congress of the United States empowering the National Labor Relations Board and the National Labor Relations Board only to prosecute unfair labor practices committed under the Act. That not only has been stated by the Congress of the United States, but the Fifth Circuit Court of Appeals definitely put to rest any question as to interest of private parties in a proceeding of this kind in the *Agwilines* case. That doctrine was subsequently affirmed with equal force by the Supreme Court of the United States in the *Amalgamated* case.

Since that time all courts have clearly accepted as the doctrine that it is the United States Government that brings these actions, and not on the relation of anybody. But in the interest of the United States and public interest. Not in the interest of any private person.

I think your Honor has correctly stated that the practice of the Board, so long as I can remember, having been a member of the staff for about nine years, that the charging party has been permitted without question to appear by counsel and to examine witnesses, to that I do not object. [220]

But, as I say, in the interest of technical niceties I think the record should at least show I do not agree that anybody besides the National Labor Relations Board is the moving party and that the proceedings are not on the relation of anybody.

Mr. Schullman: Since we are being technical, I want to clarify the record for the niceties. Since there is disagreement with you, when I mentioned the word "moving party" I did not use them in the fashion that the government or the district attorney or the prosecutor would. I meant they were the party that made the charge and moved in that they succeeded in getting the Board to proceed. So there is no disagreement on that.

I agree with the court, despite those two cases where the Board indicated that the government proceed, didn't mean it was in the nature of ex rel.

Trial Examiner: It is nearer, to that type of proceeding.

Mr. Schullman: It has been so compared in cases. In other words, it is true no other—it is technically presumed it is only the governmental and public interest. It is nearer to that type of proceeding than any other proceeding.

Mr. Collins: Mr. Trial Examiner, Section 28 of the Rules and Regulations of the National Labor

Relations Act [221] effected July 12, 1944, on page 9 states, among other things, that "The hearing for the purpose of taking evidence upon a complaint shall be conducted by a Trial Examiner."

Section 24 delineates the duties of the Trial Examiner. It seems counsel for the Board and the Trial Examiner shall have the power to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence. It doesn't say anything about any unions or anybody else complaining about it.

The next section says "Rights of parties. Any party shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine and cross-examine witnesses."

I submit that you might tolerate somebody coming in here, and you have that right, if the respondents do not object to it.

I emphatically object to having counsel for any union, except those affected by this proceeding, to wit, the A.F.L., in this proceeding, having the right to cross-examine my witnesses.

Trial Examiner Kent: That practice is always bad, and I think properly the attorney for the charging party may, in view of the fact the same rule applies to the various A.F.L. counsel, there is a quasi-identity of interests between the Board's attorney—and if you regard the C.I.O.'s attorney as a representative of the C.I.O.—and its interest in the proceeding.

I don't think that the C.I.O. attorney should examine on the same matters the Board counsel does.

Neither do I think that the numerous counsel for the various A.F.L. unions should examine or cross-examine on the same matter covered by other counsel. That is the general rule to expedite the hearing and save time.

Mr. Schullman: Except when it particularly applies to the particular party involved.

Trial Examiner Kent: Yes. Our practice has always been to permit the attorney for the charging party to participate at least to that extent. Even in 8(3) cases the dischargees are regarded as quasi-parties.

Mr. Garrett: I desire to state, and I desire to have the record show that I, on behalf of the labor organizations represented here by me, object to any participation by United Steelworkers of America, Stove Division, Local 1981, C.I.O., in these proceedings.

I object to and oppose their motion to intervene, which has just been handed to me, and object to their participation in these proceedings, either under that motion or otherwise in either examining, producing or cross-examining witnesses, making objections or entering into stipulations.

I desire to state, with respect to what was said by Mr. [223] Nicoson, that the labor organizations represented by me deny that this Board has any authority to impair the obligations of the contract with the labor organizations I represent are a party to.

I would like to state that I had a conversation with the reporter prior to the inception of this

hearing concerning the ordering of a transcript by the A.F.L. unions. I informed the reporter I had written to San Francisco yesterday regarding the question of authority on my part so to do. I have just now been handed a memorandum from the outer office here stating that the person to whom I addressed that communication in San Francisco is here in the city and will be here for two hours.

It is obvious that my letter did not reach that person in San Francisco because of his presence here today. If I might have a recess for ten minutes it would be greatly appreciated.

Trial Examiner Kent: Yes. You may have the recess. But previous to that I had better rule on your motion.

Mr. Garrett: Yes.

Trial Examiner Kent: Having ruled on Mr. Tyre's motion for leave to intervene, holding that I deemed it unnecessary, why, that, in effect, is an overruling of your present motion.

Mr. Garrett: I assume that I may be granted a continuing objection. [224]

Trial Examiner Kent: How is that?

Mr. Garrett: I assume also I may be granted a continuing objection to any participation by the C.I.O.

Trial Examiner Kent: Yes.

Mr. Garrett: So I won't have to object.

Trial Examiner Kent: You have an automatic exception to any adverse ruling that the Trial Examiner makes.

Mr. Garrett: Yes. That isn't what I wanted.

I wanted it understood that I had a continuing objection along the lines of what I have just stated, so that I won't have to get up and restate it every time.

Trial Examiner Kent: No. I think the record is clear on that. I have ruled he can participate to that limited extent. He can't examine and cross-examine on the same matters gone into by the Board. That is merely to expedite time. I think it is a rule generally followed where the parties have some similarity of interest in the outcome of a proceeding.

We will take a 10-minute recess.

(Short recess taken.) [225]

Trial Examiner Kent: We might proceed. Having denied your motion for intervention, Mr. Tyre, do you wish those two copies of the written motion to go in as rejected exhibits?

Mr. Tyre: I think I filed the original and three copies, yes, as rejected exhibits.

Trial Examiner Kent: They are received as rejected exhibits, then.

(The document heretofore marked as C.I.O.'s Exhibit No. 1, for identification, was received in evidence as rejected exhibit.)

Mr. Nicoson: I would like to call Mr. Spallino to the stand.

Mr. Collins: Mr. Trial Examiner, before we take this witness, before we start on this witness, I have been reading the transcript, and I note on page 103 in a line down about the center of the page it says, "I expect to show they had at one time as many

as 108 employees." The statement was 180. I wonder if the record might be corrected.

Trial Examiner Kent: Yes.

Mr. Collins: I also note on page——

Mr. Tyre: What page was that last one?

Mr. Nicoson: 103.

Mr. Collins: I also note on page 127 that I offered to stipulate that so far as O'Keefe and Merritt Company is concerned, that we would sign a contract with the Steelworkers [226] upon the same terms and conditions as the one they have with the American Federation of Labor, with the exception that there are so many A. F. of L. members working for the O'Keefe and Merritt Company that we would expect to grant them maintenance of membership with the customary escape clause. I also added another condition to that, to wit, that they take O'Keefe and Merritt off the unfair list. I assumed at that time, due to my conversations with the organizers for the C.I.O. that they could do that. In subsequent conversations they state that they cannot get O'Keefe and Merritt off the unfair list, or at least they do not wish to make the statement, so I wish to remove that as one of the conditions that I would stipulate. I want the same statement that I referred to, the only exception being that we would want maintenance of membership with the customary escape clause. I would like to have the record show that. I wonder if the stipulation might be more acceptable now, in the interest of shortening and stopping this lengthy proceeding.

Mr. Tyre: I wonder if I could examine, Mr. Collins, how many people would be covered by this contract with O'Keefe and Merritt at this time.

Mr. Collins: To the best of my information and belief, there are approximately 50 employees of the O'Keefe and Merritt Company.

Mr. Tyre: 50? [227]

Mr. Collins: 50.

Mr. Nicoson: To make a long story short, I couldn't agree to stipulate to that. I don't know about the other people.

Trial Examiner Kent: What is that, Mr. Tyre?

Mr. Tyre: That was Mr. Nicoson.

Mr. Nicoson: I said I couldn't agree to stipulate to that.

Mr. Collins: That would remove one of the charges.

Mr. Nicoson: I don't think that removes anything.

Mr. Collins: To sit down here and sign a contract in the court here today, it would remove that charge. We are bargaining in good faith, if we signed a contract; it is more than bargaining.

Mr. Nicoson: The record will show whether or not it is good faith. I am content to let the record stand.

Mr. Collins: I understand then the C.I.O., appearing in court by counsel, refuses this offer I now make?

Mr. Tyre: I don't think it is necessary to re-

fuse, reject or modify. The Board has indicated it does not accept; that is the end of that.

Mr. Collins: Very well.

Mr. Nicoson: Now, does your Honor think it would be safe for me to ask the witness a question?

Trial Examiner Kent: Yes, you may proceed.

CHARLES SPALLINO,

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Continued)

By Mr. Nicoson:

Q. You are the same Mr. Charles Spallino that testified in this proceeding yesterday; are you not?

A. Yes, I am.

Q. At the end of yesterday's session you will recollect—if I am wrong, correct me—you had just related an experience you had had with Mr. John Roberts of the Stove Mounters, in which you stated that you had given him some cards, had signed up some more in the service department, and that you and Mr. Levascos with Mr. Roberts went up to the room regularly occupied by Mr. Levascos.

A. It is not generally occupied by Mr. Levascos. It is sort of a room away from everybody. It is a room that——

Q. It is the room that Mr. Levascos habitually used? A. He has a key to the place.

Q. After that meeting with Roberts and after

(Testimony of Charles Spallino.)

being in the room, the three of you, did you thereafter have a conversation with Mr. Daniel P. O'Keefe? A. The same day?

Q. Well, did you have a conversation with him? I will fix the time, if you had one. [229]

A. No.

Q. Now, do you understand the question?

A. Not truly.

Q. All right. You remember this occurrence I have told you about with Roberts and Levascos and the cards and so forth? A. Yes.

Q. After that, at any time did you have a conversation with Mr. Daniel P. O'Keefe?

A. That was later.

Q. All right. I take it then you did have a conversation, a conversation with Mr. O'Keefe?

A. Yes.

Q. When did that conversation take place?

A. Well, I had several conversations with him.

Q. I am referring now only to the first one that took place after this meeting with Mr. Roberts and Mr. Levascos.

A. If my memory is right, we had a conversation with Mr. O'Keefe when I was called by Mr. Collins, our lawyer, and he had a pamphlet—literature that the Five and Over president was supposed to put out.

Mr. Garrett: I object to that; no proper foundation.

Mr. Nicoson: I agree with you. I am trying to establish contact with the witness.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): After this meeting with Roberts, which I have just refreshed your recollection on, did you have a [230] conversation with Mr. O'Keefe with respect to the application slips?

A. Oh, yes.

Q. When did that conversation take place?

A. That was on a Saturday.

Q. How long after you met Mr. Roberts?

A. I would say a week afterwards, I met Mr. Roberts.

Q. Where did the conversation take place?

A. In the plant.

Q. Whereabouts in the plant?

A. Near the shipping department.

Q. Who was present at the time?

A. Well, I was with a committee at that time. I was loading a truck with beer and material for a dance I was giving on that date.

Q. Who was present in the committee?

A. Well, there was Louie Ortega. No, I beg your pardon. Louie wasn't on that. It was Johnny Miles.

Q. Miles?

A. One of the truck drivers. And Tom Martin. And—let me think hard who the others were. Angel Defoe, I think it is.

Q. Devoe? A. Defoe. Charlie Gatone.

Mr. Garrett: How do you spell that? [231]

The Witness: G-a-t-o-n-e, or something like that.

Trial Examiner Kent: What does he do?

The Witness: Charlie Gatone?

Trial Examiner Kent: Yes.

(Testimony of Charles Spallino.)

The Witness: At the present I really don't know—Oh, he is in the plating department.

Q. (By Mr. Nicoson): What was he doing at that time?

A. At that time—well, he probably was a welder; I wouldn't be sure, but he was a welder.

Q. Was anyone else present?

A. I can't recall the others. I think there was one more, I can't remember who he was.

Q. What does Johnny Miles do?

A. At present he is a truck driver.

Q. What was he doing then?

A. Well, he was in the generator—I am not very certain whether he was in the generator department.

Q. At that time what did Mr. Martin do?

A. Martin? He was in the same department.

Q. At that time what did Mr. Defoe do?

A. I am sure he was in that—or he was helping welders. I think he was helping welders.

Q. About what time of day did this occur?

A. In the morning.

Q. During working hours or off working hours?

A. We were off. It was on Saturday.

Q. Saturday? A. Yes.

Q. Will you now recite what occurred in the conversation, giving us the names of those who made the statements?

Mr. Schullman: If the court please, before the answer is given I want to—since it is another day—again make my blanket objection to testimony of

(Testimony of Charles Spallino.)

this witness, and particularly of this particular question, since very clearly it couldn't possibly bind my client, Local 792. And for the further reason it doesn't tend to prove or disprove any of the issues in the matter as affecting my clients. For the same reason it is incompetent, irrelevant and immaterial, as far as my clients are concerned.

Again, so I don't have to repeat my objection in the same form as yesterday, I will ask that a blanket objection to the testimony of this witness be renewed at the end of each question, without stating it into the record.

Trial Examiner Kent: Yes, your objection may go generally to the general line. Of course, the testimony is admissible to meet other issues.

Mr. Collins: I will join in this objection on behalf of the Pioneer Electric Company.

Mr. Garrett: My objections also, of course, go to all conversations related at which representatives of the unions [233] represented here by me were not present, and I therefore object on the ground that the question calls for hearsay, that no proper foundation has been laid, that the conversation is not binding upon the unions I represent, and that it is not a conversation participated in by anyone with whom my unions have or had contractual relations, and I ask, so that I won't have to continue to state that objection, that that objection be a continuing one to all conversations in which representatives of these objecting unions are not shown by the foundation to have been present.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Well, in regard to the foundation being laid, Mr. O'Keefe, as I remember was previously identified.

Mr. Nicoson: As the president of the company, that is correct.

Trial Examiner Kent: Yes. That was by the——

Mr. Garrett: That is not a corporation, as I understand it.

Trial Examiner Kent: The answer may be taken. I will overrule the objection.

Mr. Garrett: And I have a continuing objection?

Trial Examiner Kent: Yes, for this type and line of questioning you have.

Mr. Collins: I have the same ruling, do I not, Mr. Examiner, so far as the Pioneer Electric is concerned? [234]

Trial Examiner Kent: That is probable, as far as the Pioneer is concerned at this time. It does go to meet some of the issues raised in the complaint, so it is generally admissible.

The Witness: Answer?

Trial Examiner Kent: Yes.

The Witness: Well, Mr. O'Keefe, I happened to run into him in the aisle near the shipping department and he stopped me and he says, "You got an early start——"

Mr. Garrett: One moment. There is no proper foundation laid. There is no showing as to whether or not these other parties who have been named were present at this conversation or not.

(Testimony of Charles Spallino.)

Mr. Nicoson: The witness testified they were present.

Trial Examiner Kent: Yes, he testified that Miles and Defoe and Gatone were with him at that time.

Mr. Garrett: Now, he is heading along and he says I was going in the shipping department and I happened to meet Mr. O'Keefe in the aisle, so we have a different situation, and no direct evidence as to whether or not other persons were present besides himself and Mr. O'Keefe.

Trial Examiner Kent: Of course, in one of the preliminary questions, he said this committee was there when they had this conversation. I gather that it is sort of a fair assumption that was a continuing situation, since the conversation was [235] in the presence of this committee, I think it is a fair assumption that it was a continuing recitation.

Mr. Garrett: Wouldn't it be proper to take this witness then on voir dire to find out whether or not at the time he met Mr. O'Keefe in the aisle the other persons he mentioned were present?

Trial Examiner Kent: Well, technically, I suppose if you insist it may have merit. I will let Mr. Nicoson ask that question.

Q. (By Mr. Nicoson): Were these other people there at the time, Charles?

A. They were loading a truck.

Q. Were they there?

A. They were within seeing. They were not within hearing.

(Testimony of Charles Spallino.)

Q. They were not within hearing distance?

Mr. Garrett: I think I stand vindicated now, your Honor.

Q. (By Mr. Nicoson): Then at the time you were about to relate, who else was present besides you and Mr. O'Keefe at that particular spot?

A. As we talked?

Q. Yes.

A. Well, they were near. I wouldn't say they were present to hear.

Q. Would you say there was anyone present besides yourself and Mr. O'Keefe who would hear it? [236] A. No.

Q. What was said then at that time by Mr. O'Keefe and what was said by you?

A. Well, Mr. O'Keefe says that, "Charlie, I hear there has been a lot of pressure put on some of these fellows that you are signing up for the A. F. of L."

And I said, "No, Mr. O'Keefe, that ain't so." I says, "I used a little politics on the way I talked to the fellows, that they didn't have to sign, that when election time came they could vote the way they wanted to," and I told him that I had 85 signatures already given to Mr. Roberts, representative of the A. F. of L. at that time, that I thought that I did my part, that I was going to have my hands out from then on, and he says, "Well, you done a good job and that should be enough. Let them take care of it from then on." And that was the conversation.

(Testimony of Charles Spallino.)

Q. Had you prior to that time had any conversation with Mr. O'Keefe with respect to the application slips?

Mr. Schullman: Objected to for the reasons that the question originally stated, the question indicated that this was his first conversation with Mr. O'Keefe, therefore, it is assuming facts that are not in evidence.

Trial Examiner Kent: This was the first conversation following.

Mr. Nicoson: He said it was the first. I want to find [237] out if this really is right.

Mr. Schullman: Now, if he wants to impeach his own witness, he ought to so state, but I think he has several times clarified for the record that this was the first conversation with Mr. O'Keefe. I think it would be highly improper to try to impeach his own witness.

Mr. Nicoson: It is not a matter of impeachment. It is a matter of rehabilitating a witness. The poor witness sits here through the long objections involved, we have the arguments and statements going on for about 30 minutes, and the poor boy is asked to answer the question that was put to him 30 minutes ago.

Mr. Schullman: I think, your Honor, that is an unfair statement, because as far as I am concerned I have not interposed objections except when necessary, and to be very clear about it I carefully listened to the interrogation and I think the record is very clear that he asked several times now when

(Testimony of Charles Spallino.)

was the first time you spoke to him, and the answer was given.

Mr. Nicoson: No.

Mr. Schullman: Well, let's read the record, then, counsel.

Mr. Nicoson: If counsel will bear with me, the question said when was the first time he had a conversation with Mr. O'Keefe after the time I established that he had the [238] conversation with Mr. Roberts. I am now asking if prior to that time he ever had any conversation with Mr. O'Keefe, and I submit that is perfectly proper and it is not an impeachment of the witness.

Mr. Schullman: If your Honor please, I think we really ought to take a few minutes and I would like to have the reporter read back the interrogation concerning the opening of this session.

Mr. Nicoson: Perfectly glad to have it.

Mr. Schullman: I think you will find, unless I am in error, and I may be, but I think you will find that it was very clearly said this was the first conversation with Mr. O'Keefe.

Trial Examiner Kent: After he delivered the application cards.

Mr. Schullman: No, your Honor.

Mr. Nicoson: All right, let's have the record read and get the facts of this situation.

Trial Examiner Kent: We will appeal to the record, then.

Mr. Nicoson: Begin at the beginning of the examination of this witness.

(Testimony of Charles Spallino.)

Mr. Schullman: Maybe I will save some time. If the intention is to go back before Mr. Roberts' time, I mean, let's find out and perhaps I will withdraw my objection.

Mr. Nicoson: Well, that is the intention. If you want [239] to withdraw your objection, it is all right with me. The record is here.

Mr. Schullman: Let's have it then.

Mr. Nicoson: Since you challenged it, I suppose——

Mr. Schullman: Let's hear it.

(The record was read.)

Mr. Nicoson: Does that satisfy you?

Mr. Schullman: Counsel has drawn first blood.

Mr. Nicoson: Now, do you have the question I put?

(The pending question was read as follows:

“Q. Had you prior to that time had any conversation with Mr. O'Keefe with respect to the application slips?”)

A. That is before the——

Q. (By Mr. Nicoson): Before the one you just related. A. Yes.

Q. When did that conversation occur?

A. Well, that was, I would say, about a month earlier, or somewhere in that neighborhood, that Johnny Levascos and I myself went into Mr. O'Keefe's office to find out——

Q. Wait just a minute. Was there anyone else besides you and Levascos and Mr. O'Keefe present?

(Testimony of Charles Spallino.)

A. At that time there was Johnny Levascos and Mr. O'Keefe and myself.

Q. What time of day was it? [240]

A. In the morning, I would say.

Trial Examiner Kent: Try and talk a little louder.

Q. (By Mr. Nicoson): What at that time was said by Mr. O'Keefe and what was said by Mr. Levascos and what was said by you?

A. Well, Johnny started the conversation, to find out if it was true that we had to get into the union and how did he think about it, and Mr. O'Keefe said that, "Well, we are trying to branch out our business up north, and we have been on the unfair list of the A. F. of L. and we should—well. he says, "I can't come right out of it but," he says, "Collins knows everything, and you work right from Collins," he says, "don't even bother Joe Spallino, but see Collins," that Collins would be the fellow to tell us what to do. [241]

Q. You will correct me if I misquote your previous testimony. I believe you have already testified that you had several meetings with Mr. Roberts. Was that the way you put it?

A. Mr. Roberts?

Q. Yes. A. Yes.

Q. At any of those meetings was a person by the name of McMurray present?

A. McMurray, yes.

Q. Do you know who Mr. McMurray is?

A. Well, I have seen him here in the court room.

(Testimony of Charles Spallino.)

Q. Do you know what his business or occupation was at that time?

A. Mr. McMurray, he is a machinist, I think he represents the Machinists.

Q. Where did you first see Mr. McMurray?

A. I don't remember whether it was in Collins' office, possibly in Collins' office.

Q. Do you know a Mr. Bud Daley?

Mr. Garrett: Can I have that last name, please?

Mr. Nicoson (Spelling): B-u-d D-a-l-e-y.

Q. (By Mr. Nicoson): Who is Bud Daley?

A. He is a machinist.

Q. Where is he employed or where was he employed? A. At O'Keefe & Merritt. [242]

Q. And did you at any time see Mr. McMurray on an occasion when Mr. Daley was present?

A. No.

Mr. Nicoson: Will you mark this, please?

(Thereupon, the document referred to was marked as Board's Exhibit No. 8, for identification.)

Q. (By Mr. Nicoson): I hand you an instrument which, for the purpose of identification, has been marked Board's Exhibit 8, and ask you to examine it and state, if you know, what it is.

A. This is Machinists' application.

Q. Did you ever have that card in your possession? A. I have.

Q. Where did you get it?

A. From McMurray.

Q. Will you describe the circumstances sur-

(Testimony of Charles Spallino.)

rounding the occasion when you got it from Mr. McMurray?

A. Well, I am not sure I got it in Collins' office, but at one time he—McMurray came into the employees' entrance and he handed me about, oh, I would say, 35, 40 of these cards (indicating).

Mr. Schullman: I wonder, counsel, if you could sort of approximate that time.

Mr. Nicoson: I will try to, counsel. Thank you.

Q. (By Mr. Nicoson): When did that occur?

A. Well, it was after a meeting that we had at Collins' office. There were several union representatives in his office at that time.

Q. Can you fix that meeting, the time of that meeting?

A. That was, I would say, within two—between two and three weeks of the time that Roberts handed me those cards. I would say within, between two and three weeks.

Q. Was there anyone present besides Mr. McMurray and yourself at the time you received those cards?

A. There was Johnnie Levascos.

Q. Just the three of you? A. Yes.

Q. Did you say where this occurred?

A. In front of the employees' entrance.

Q. Did you at that time have any conversation with Mr. McMurray or Mr. Levascos about these cards?

A. Well, I——

Mr. Garrett: Objected to; no proper foundation laid.

(Testimony of Charles Spallino.)

Mr. Nicoson: I submit that is one of the foundation question.

Trial Examiner Kent: Yes, it is a preliminary question. I can't see any harm—

Mr. Garrett: At the beginning he asked him to give the conversation.

Mr. Nicoson: I asked him if he had a conversation. [244]

Mr. Garrett: I also want to point out it isn't clear in this witness' testimony—maybe I misunderstood him because he was holding that card in his mouth—as to whether this was two or three weeks before or two or three weeks after.

Trial Examiner Kent: Those gentlemen up at the end of the table have to hear you, too.

The Witness: Yes.

Q. (By Mr. Nicoson): Will you enlighten counsel as to whether it was before or after?

A. What was that question?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: I said it was in between two and three weeks prior to the time that I had contact with Roberts.

Q. (By Mr. Nicoson): Prior, did you say?

A. Yes, before I handed these 50 applications to Roberts.

Q. Did you at that time have a conversation with Mr. McMurray about the cards?

A. When he handed me the cards?

Q. Yes.

(Testimony of Charles Spallino.)

A. Well, when he handed me the cards——

Q. Did you? Just say yes or no.

A. No, there wasn't much of a conversation.

Q. Did you talk? Did anybody say anything?

A. Well, that we would take care of the cards.

Q. Somebody said something; is that your testimony? A. Yes.

Q. What was said and who said it?

A. Well, then I took the cards——

Q. What was said?

A. Well, I couldn't take care of the Machinists' cards.

Q. Did anybody say anything to you about that, taking care of machinists' cards?

A. That I didn't have time; that is what I said.

Q. Did anybody say anything to you about it?

A. To get these cards——

Q. Do you understand what I am trying to drive at, Mr. Spallino? Did Mr. McMurray say anything at all to you at that time? Answer yes or no.

A. He wanted to know how strong——

Q. Answer yes or no. A. Yes.

Q. Anything at all? A. Yes.

Q. Anything under the sun? A. Yes.

Q. He said something to you? A. Yes.

Q. What did he say? [246]

A. He wanted to know how many——

Q. Not what he wanted to know. What did he say?

A. How many fellows were in the machine shop,

(Testimony of Charles Spallino.)

how many members or workers in the machine shop.

Q. Did you make a reply to that?

A. I told him there was about 14 or 15 I could recall at this time.

Q. Did Mr. McMurray say anything further?

A. No. He says he would like to get the cards to him. That he had one fellow that was already a machinists, paid up member, that he would like to talk to him.

Q. Did he mention him by name?

A. He did, but I don't recall his name.

Q. Was there anything further said at that time by either you, Mr. Levascos or Mr. McMurray?

A. No. We were going to take care of the cards.

Q. Did you take the cards from Mr. McMurray?

A. I did.

Mr. Collins: Mr. Nicoson, may we have the exact date in the record of this conversation with Mr. McMurray?

Mr. Nicoson: He said between two or three weeks after——

Mr. Schullman: Prior.

Q. (By Mr. Nicoson): When did you have this conversation with Mr. McMurray?

A. You want to know the exact time? [247]

Q. As nearly as you can fix it.

A. As near as I can fix it, it was in the three weeks there; things happened awfully fast.

Q. Three weeks of what?

(Testimony of Charles Spallino.)

A. The time I had this conversation with Roberts.

Mr. Collins: What was the date of that?

Mr. Nicoson: I think that has been fixed in the record. That is cross-examination. He can examine on that cross-examination.

I now offer in the record Board's Exhibit 8.

Mr. Schullman: If the court please, on behalf of Local 792, the same line of objections is made as to the other exhibits. We object to the introduction in evidence of Board's Exhibit 8, the authorization of representation of the IAM insofar as it may attempt to be binding or affect my clients 792.

Clearly on its face it doesn't purport to be a card or document of my clients, nor any authorization on behalf of my clients. It is therefore incompetent, irrelevant and immaterial; doesn't tend to prove any issues in the case; and doesn't tend to prove or disprove the allegations—there are no allegations in the complaint affecting my clients. Anyhow, therefore, we object to the introduction of this Exhibit 8.

Trial Examiner Kent: Where did you get that particular [248] card?

Mr. Nicoson: He got it from Mr. McMurray.

Trial Examiner Kent: Does the record show that?

Mr. Nicoson: Purported himself to be a representative of the Machinists.

Mr. Collins: I object on behalf of Pioneer Elec-

(Testimony of Charles Spallino.)

tric Company on the ground there is no proper foundation laid; doesn't tend to prove or disprove anything at issue so far as their case is concerned. It is not binding upon the Pioneer Electric. There is no showing that any representative or officer of the Pioneer Electric was present at any of these conversations.

Trial Examiner Kent: I am a little confused. Where did you get that card?

The Witness: From Mr. McMurray.

Trial Examiner Kent: It may be received.

Mr. Schullman: If the court please, previously in my objections ruling had been reserved on the other seven exhibits, which were of the same general type and description in that none of them—

Trial Examiner Kent: There were certain exhibits that ruling was reserved on pertaining to the representation proceeding. I previously have admitted, I think, the exhibit prior to this, another card.

Mr. Schullman: I objected. The ruling was reserved on [249] that, as far as we are concerned. That is my notation. I am sorry I didn't hear.

Trial Examiner Kent: No, I think I will make a general ruling. This is admissible. It does tend to meet some of the issues. Of course, I think your objection goes to the weight where it concerns your clients.

Mr. Schullman: No. Let me make myself explicitly clear. We are a party to the proceedings. We are a separate party. My clients appear through

(Testimony of Charles Spallino.)

separate counsel. I am not objecting to the admission of this card insofar as some of the issues are concerned. Insofar as they affect my clients it is proper to have a ruling on that part of the case.

Now, by no stretch of the imagination, can an exhibit secured as a result of conversation between individuals, none of whom—I mean that is elementary law—none of whom represent my clients. There is no evidence they had authority for my clients. There hasn't been a mention of any of my clients being involved. You cannot accept evidence in the record that is entirely foreign to one of the parties. I am not speaking about all the parties. They have their own individual objections.

So, for that reason, I had assumed that ruling was reserved until such time as they possibly could show—if they could ever show—I don't see how they can show—this could affect Local 792. [250]

Local 792, as a matter of fact, is not, nor never has been part of the Machinists. So it isn't a question of foundation, your Honor. If somebody brought in a document showing the Chamber of Commerce—giving them a Chamber of Commerce document, how could you bind my clients on conversation had between individuals, none of whom represent or are authorized to represent my clients. You cannot admit it into evidence. It is a mis-carriage of law to admit it. It can be remedied.

I, therefore, object very strenuously, and your Honor can make a ruling limitedly to this particu-

(Testimony of Charles Spallino.)

lar case, that this exhibit and the others to which we objected, since there is no evidence—not a shred of it—that can be applicable to my clients, that therefore, insofar as they are concerned, it is not admissible. It isn't a question of foundation.

There is no law, and I would like to see and have some law, which would bind litigants on written documents secured in conversation, when the parties involved do not represent my clients, or the litigants, where the documents do not relate to my clients or the litigants. That is simple, elementary law.

Mr. Nicoson: I submit, your Honor, that if we are able to prove—and I think we will be—that this whole course of conduct, which we are only scratching the surface of at the moment, is unfair labor practices, and that, as a result of [251] those unfair labor practices, and as a part of those unfair labor practices, the Painters got a contract which we have alleged is illegal, then obviously this whole course of conduct affects the Painters as well as any of the other AFL contracting parties.

I submit it is relevant and material, not only as to the O'Keefe and Merritt, but to all other parties, both respondents and those interested in the contract.

Mr. Schullman: I submit, your Honor, that type of proof, when the record will finally be adduced, is impossible. Both counsel are merely stating—we are not witnesses—what we think will be proven. Until that is proven—that is the reason I hesitated

(Testimony of Charles Spallino.)

when ruling was reserved—until they can prove that, until they can tie my clients to these documents, I submit that the least this court can do is reserve ruling. When it is tied in I will make additional argument at that time, if it can possibly be tied.

Mr. Collins: The practical matter, Mr. Trial Examiner, is, when you admit evidence against people who certainly have no opportunity to be present and controvert this evidence with evidence of their own, you do two things. You either make it impossible for them to defend themselves or you make this proceeding so long you will never get through with it. They will be digging up little bits of scraps of evidence, trying to show no such conversation ever took place. [252] It is an impossible thing.

I submit there should be rulings made as we go along. This is admissible against this party and not against that, and so on. The evidence should be divided so we know what to defend and what we can eliminate from our defense.

Mr. Schullman: Can your Honor make a decision admitting this against my clients on the state of the record presently under any law? How can you tie a litigant—I am sincere in this—how can you have a record tying a litigant, admitting evidence, when admittedly on its face there is no reference to the litigant involved, and the conversation admittedly—no Painters were present, ad-

(Testimony of Charles Spallino.)

mittedly nobody with authority was present to bind anybody. As the state of the record exists——

Mr. Nicoson: I certainly don't agree he admitted no representative of the Painters was present. I think before this is over we will show the Painters are as much involved in this as anyone else.

Mr. Schullman: Counsel knows that isn't so, because, as the record will show, the Painters didn't even participate in the election, insofar as the consent is concerned. We will meet that when the time comes. Anyhow, I will submit that to a ruling. There is no sense in continuing to redundantly argue my point.

Mr. Nicoson: For once I agree with you, counsel. [253]

Mr. Schullman: I think, your Honor, it is a question of discussion between counsel. That don't get the facts. Whether levity statements are necessary here—I am here to get a perfect record.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 8, for identification, was received in evidence.)

(Testimony of Charles Spallino.)

BOARD'S EXHIBIT No. 8
[Front of postal card.]

Postage
Will Be Paid
by
Addressee

No
Postage Stamp
Necessary if
Mailed in the
United
States

BUSINESS REPLY CARD (First Class Permit No. 16049,
Sec. 510, P.L.& R., Los Angeles, Calif.)

International Ass'n of Machinists, Lodge 311
Machinists Building
123 W. 18th Street
Los Angeles 15, California

[Back of postal card.]

Authorization for Representation Under the National Labor
Relations Act

[Emblem] I.A. of M. (A.F. of L.)

I, the undersigned, employee of.....(company).....(ad-
dress).....authorize Lodge No. 311, International Association
of Machinists, to represent me in negotiations for better wages
and working conditions.

This authorization supersedes any similar authority previously
given to any person or organization.

My Signature.....
My Address.....Phone.....
Kind of Work.....Dept.
Date.....Shift: Day [] Swing [] Graveyard []

[Endorsed]: Filed March 14, 1946.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): After you received those cards from Mr. McMurray, what, if anything, did you do with them?

A. I handed them to John Levascos to take care of them. I told him I had done plenty.

Q. Did you thereafter see these cards again?

A. Yes. They were handed to me, all but one or two, from this——

Q. By whom? A. Bud Daley.

Q. Bud Daley is the one you said was the machinist? A. Yes.

Q. How many cards were returned to you, if you recall?

A. Well, I would say—I don't know whether it was about 15 of them, something like that, that came back to me.

Q. Were they signed or unsigned?

A. Unsigned.

Q. Did Mr. Daley give you any signed cards?

A. No. [254]

Q. Did you thereafter see any of those cards you gave to Mr. Levascos signed? A. No.

Q. By anyone? A. No.

Q. You mentioned something in your testimony a moment ago about meeting in Collins' office. I don't know how you put it. If I am wrong, why, correct me.

A. There were several AFL organizers in the presence.

Q. When did that occur?

(Testimony of Charles Spallino.)

A. It occurred within those three weeks, between the time Roberts received those cards, those membership applications, and during all this conversation we have just——

Mr. Schullman: Counsel, may I get that a little bit clearer? I have a variable date here. I have the fact that his conversation with McMurray was prior to Roberts. Now, is this conversation in Collins' office prior to Roberts?

The Witness: That happened in those three weeks. I wouldn't say prior to it.

Mr. Nicoson: Let me try to fix the time, counsel, and then you can object.

Q. (By Mr. Nicoson): Do you recall?

Mr. Schullman: I am not objecting. Pardon me, counsel. I am not objecting. I am trying to get an accurate approximation. It is not an objection.

Mr. Tyre: Could we read the answer of Mr. Spallino back before the last one? I think that was clear.

Trial Examiner Kent: Yes.

(The record was read.)

Q. (By Mr. Nicoson): Now, directing your testimony to the time you and Mr. Levascos first went to Mr. Collins' office, do you remember that?

A. Yes.

Q. Was it before or after that time?

Mr. Schullman: If your Honor please, at this time I move to strike out the answer.

Mr. Nicoson: There isn't any.

(Testimony of Charles Spallino.)

Mr. Schullman: The previous one. The question was asked when he went to Collins' office, and he identified the approximate time and there were AFL organizers. I move that question and answer be stricken out—the answer, especially. There is no foundation. I thought he was going to follow it up. If there are AFL organizers, I want to know who they are.

Mr. Nicoson: You will find out.

Mr. Schullman: You jumped to another track.

Mr. Nicoson: I am trying to fix the time. If you leave me alone for a couple of minutes I will do it, even to your satisfaction.

Q. (By Mr. Nicoson): Do you remember that first meeting you [256] had with Mr. Collins?

A. The first meeting?

Q. The first meeting you have testified to, where you and Mr. Levascos went to Mr. Collins' office. Do you remember that?

A. Yes.

Q. Now, was this meeting that you are testifying about, the AFL organizers, before you first met with Mr. Collins or was it after?

A. After.

Q. How long after?

A. Well, I would say in those three weeks.

Q. Well, would you say it was three weeks, one week, two weeks, two days or four days or what?

A. Everything is happening every day there.

Q. As best you can fix it for us.

Trial Examiner Kent: I am a little bit dubious about the record. It is my recollection yesterday he testified to a conversation with Mr. Collins about

(Testimony of Charles Spallino.)

two years ago during a prior CIO campaign. I think now you probably returned to a later——

Mr. Nicoson: If your Honor will permit me to point out to you I have not asked the witness the question about that meeting. He testified at one time there was a meeting between himself, on the one hand, and Mr. Levascos and Mr. Collins; [257] three people.

If your Honor will also recall, from the record, at the meeting four years ago there were four people present. My question clearly indicates it was not the meeting two years ago. It is the one which he understands and which he is now testifying about, and which I am now trying to fix the time by.

Trial Examiner Kent: If the record is clear on that, it will be all right.

Mr. Nicoson: Let me have the last couple of questions and answers.

(The record was read.)

Q. (By Mr. Nicoson): Do you understand the question? A. Yes, I do.

Q. All right. To the best of your recollection, how long after you and Johnny met with Mr. Collins, at that time you testified——

A. The first time, I would say it would be within the three weeks.

Q. Within three weeks is a matter of three weeks? A. Yes.

Q. Now, is it three weeks or is it within three weeks? I don't care. Just tell us.

(Testimony of Charles Spallino.)

A. It would be within those three weeks.

Q. You understand three weeks consists of seven days each, [258] which is a total of 21 days. Now, when you say "within three weeks" it could be any one of those 21 days? A. Yes.

Q. You understand that?

A. Yes, any one of those.

Q. Any one of those 21? A. Yes. [259]

Q. Is it your testimony that you can no closer fix it than within the three weeks' period?

A. Not the date.

Q. I also take it, and you correct me if I am wrong, you were present at that meeting in Mr. Collins' office? A. Yes.

Q. Who else was present besides yourself?

A. Well, there was Johnnie Levascos, Cecil Collins, and McMurray, Mr. Roberts.

Q. Is that the same McMurray you have testified about?

A. Yes. Mr. Roberts of the Stove Mounters and there was a Teamster fellow, I don't recall his name at this time. He was a little short fellow. And there was a representative of the Carpenters, I don't recall his name at this time.

Q. Do you remember when he was called at that time?

A. This carpenter? I don't recall that.

Q. All right, anyone else?

A. I am trying to think of this fellow from the foundry, Lazzerini, I think that he was there, it is pretty hard to remember them all.

(Testimony of Charles Spallino.)

Q. Have you now exhausted your recollection as to names of the parties there?

A. Of more than these names of the ones I have mentioned?

Q. Is that all you can recall?

A. That is all I can recall at this time. [260]

Q. I will ask you to state whether or not a Mr. Blaney was there.

A. That is the Teamster. I recollect now.

Q. I will ask you to state whether or not a Mr. Nick Cordell was present.

Mr. Garrett: Objected to as leading and suggestive.

Mr. Nicoson: It obviously is, and the witness has exhausted his memory and a leading question is permissible.

Trial Examiner Kent: Yes, I think so.

Mr. Garrett: I don't believe that. I have never heard of that rule.

Mr. Nicoson: You should consult Professor Wigmore.

Trial Examiner Kent: The record will remain. Let us proceed.

Mr. Garrett: Are you overruling my objection, Mr. Trial Examiner?

Trial Examiner Kent: Yes.

Mr. Nicoson: Will you read the question, Mr. Reporter?

Mr. Garrett: Wigmore is obsolete here. There are more modern professors than Wigmore.

(Testimony of Charles Spallino.)

Mr. Nicoson: Will you please read the question to the witness?

(Question read.)

Mr. Garrett: I would like to say, your Honor, that I [261] understand your Honor is overruling my objection, and I abide by your Honor's ruling, but I would ask your Honor what would be the purpose of a rule that would permit counsel on direct examination to get all that he could out of a witness by legitimate means and then because he couldn't get any more, start in to leading and putting words and names in the witness' mouth.

Trial Examiner Kent: I think the inquiry is proper. When it clearly appears that the witness' recollection seems to be exhausted, it is proper questioning for counsel to refresh his recollection or attempt to refresh his recollection. That is based on an assumption, of course, that in previous interviews with the witness counsel has probably received that information. I think it is proper practice, and I am going to permit the inquiry.

Mr. Collins: Mr. Trial Examiner, on stipulation of counsel that we were going to close at 12:00 and at 4:30, it is now 12:15, and as much as I have enjoyed this session——

Trial Examiner Kent: Let's see. What is this stipulation of counsel?

Mr. Nicoson: May I go ahead and have an answer to this question?

Trial Examiner Kent: Yes, let's take the answer to the question.

(Testimony of Charles Spallino.)

Mr. Nicoson: Will you read the question to him, Mr. [262] Reporter?

(Question reread.)

Mr. Garrett: Let him identify him for us.

Mr. Nicoson: Wait a minute. Let's find out if he was there.

Mr. Garrett: Note my objection to this question.

Trial Examiner Kent: The answer may be taken.

The Witness: I have a picture in my mind that the fellow that is sitting right there, I had a meeting with him at one place or another, but I can't recall who he is.

Mr. Garrett: You were indicating counsel?

The Witness: I am indicating you. I don't recall where I have seen you before.

Mr. Garrett: Indicating me?

The Witness: Yes, sir. I don't know whether that is your name or not. I have had contacts with so many A. F. of L. people—pardon me, I think I am getting out of line.

Mr. Schullman: May the record show that the witness has identified counsel as Nick Cordell.

Mr. Nicoson: No, I will not. I submit that that is not what the record shows.

Mr. Collins: The record shows that he identifies counsel as having been there.

Mr. Nicoson: As having seen him some place before in a meeting, and not as Nick Cordell. [263]

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Now, can you state, does your recollection have any value as to whether or not Mr. Nick Cordell was present? Answer yes or no. A. No.

Mr. Garrett: I wish to state, your Honor, that of course counsel can only agree to appeal to the Trial Examiner, who has the ordering of the hearing in his hands, but prior to this morning's hearing I consulted with all counsel and all were in agreement that if it pleases your Honor's convenience it would be a great convenience on the other hand to the attorneys here represented if between 12:00 and 2:00 o'clock the customary recess be taken, as is the rule in our courts of record here in this city.

Trial Examiner Kent: What are the hours observed in the courts here?

Mr. Garrett: 12:00 to 2:00, and that serves the convenience of counsel who have other litigation, in that they can return to their office and keep their office running and not be thrown entirely out of contact, due to a short noon recess. Everyone here wants that.

Trial Examiner Kent: I think that there is some merit in that. I have always felt that way. I practiced law myself in Detroit. I realize that attorneys have to have more than one client in order to live, and that when a number of counsel are engaged in one of my hearings they do have to [264] take some time to see their clients, especially in a city. It has been my experience in small towns counsel are perfectly willing to sit from 9:00 o'clock

(Testimony of Charles Spallino.)

in the morning until 6:00 o'clock at night. I suppose the clients will even come to their homes, maybe, and walk there. But I do think that they are entitled to some courtesy and consideration. How about beginning the morning session at 9:30 and sitting until 12:00 and from 2:00 to 5:00?

Mr. Garrett: If your Honor please, we hoped for something even a little better than that, and my suggestion is this, and all the attorneys here are in agreement. I have consulted each one. We should like if it were possible to commence at 10:00, as we have been doing, which gives us a chance to start our offices in the morning, run through to 12:00 and then possibly run from 2:00 to 4:30, as we did yesterday, which gives us an opportunity to go to our office in the morning, find out whether our stenographers have a new story about why they have not reported for work that day, and get back to our office and do a little work during the noon hour, and then again look in at 5:00 o'clock before the closing of our office, which customarily around here we close our law offices at 5:00. We discussed this in anticipation of the fact that the hearing might be rather more extended than we thought at the beginning, and that by such hourly arrangements, which are agreed to by all the attorneys here, [265] we could preserve our businesses from going to wreck and ruin, as they will if we are forced out of contact with our offices. We are also cognizant of the fact that the two-hour recess at noon will be much more beneficial to us in this hearing than

(Testimony of Charles Spallino.)

it often is when we are in trial in the courts up in the Civic Center, because here we are much closer to our offices and can really get in that two hours.

Trial Examiner Kent: Well, suppose we make it from 10:00 to 12:00 and 2:00 to 4:30.

Mr. Garrett: That was what we hoped for, your Honor.

Mr. Tyre: Your Honor, that was not quite what we agreed to with Mr. Garrett. We did talk about the noon recess from 12:00 to 2:00, with which I am in agreement. I want to point out that we do not get started exactly on time and our recesses are rather lengthy.

Trial Examiner Kent: Well, I think if we are going to shorten the hours we should cut out the recesses unless it means a man is called to the telephone, an emergency recess.

Mr. Tyre: I would prefer, if the court please, that we start at 10:00 and go to 12:00, and recess 12:00 to 2:00, and then come back 2:00 to 5:00. I think we can take care of our offices in the morning and have all the time necessary.

Trial Examiner Kent: I am glad you made that suggestion, which is probably fairer to me, because we are [266] supposed, of course, to sit from 9:30 to 12:30 and 2:00 to 5:00. I realize there is a distinction in the larger cities, especially in the case where a number of attorneys are involved, and so we will agree then on 10:00 to 12:00 and 2:00 to 5:00, and let's try and make it 10:00 and 2:00.

(Whereupon, at 12:25 o'clock a.m., a recess was taken until 2:00 o'clock p.m.) [267]

After Recess

(The hearing was reconvened at 2:20 o'clock p.m.)

Trial Examiner Kent: You may proceed.

Mr. Tyre: Mr. Examiner, it has been called to by attention that a typographical error was made in the number indicated on my motion for intervention on behalf of the Steelworkers. The number as given on the motion is 21-R-3101, which is the number of the R Case in this matter, which was followed by the certification. The number should be 21-C-2689.

I would like at this time to have the motion deemed to be amended in that manner.

Trial Examiner Kent: Yes. I would suggest, there are two copies in the formal exhibits. You might make physical changes on those two copies.

CHARLES SPALLINO,

called as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Nicoson:

Q. Mr. Spallino, just prior to the noon recess I believe you had testified concerning a meeting in Mr. Collins' office, at which yourself, Mr. Levascos,

(Testimony of Charles Spallino.)

Mr. Collins and some persons you had designated as being members or representatives of the AFL unions were present. Do you remember that? [268]

A. That is right.

Q. Had I asked you what time the meeting was in the day? A. What time of the day?

Q. Yes. A. I don't remember.

Q. You don't remember whether I asked you or you don't remember——

A. I don't know what you asked me.

Q. What time of day did this occasion occur?

A. It could have been in the morning.

Q. Well, what is your best recollection?

A. At that time I was working in the cafeteria and I was called at different occasions. It could have been around 9:30 in the morning. It could have been at recess, at 2:00 o'clock.

Q. What is your best recollection as to the time of day? A. In the morning.

Q. Will you now state what was said at that meeting and who made the statements?

A. Well, each representative gave——

Q. You are going to have to identify them and tell what was said, Charles.

A. That is kind of hard to do, to say who started first and who was next, because it does get awfully complicated. It has been quite a while. [269]

Q. Do the best you can.

A. Well, we had the fellow from the Teamsters, and he gave us his view of how they operated and how we go about it, and it was all a matter of con-

(Testimony of Charles Spallino.)

versation of union activities in different departments of the locals and of each union.

Q. Did this conversation have anything to do with the employees of O'Keefe and Merritt plant?

A. Well, they asked how many were in different departments, and the conversation was all on union activities, and I can't recall just word for word how it was brought about.

Q. Did Mr. Collins have anything to say?

A. Well, the exact conversation, I wouldn't know.

Q. Well, give us the substance or your best recollection of what it was.

A. Well, Johnny Levascos and I went into the reception room and we were introduced to each individual there, and we sat there and questions was asked back and forth of each department and how the fellows felt towards the union, whether they were CIO or whether they believed in the A. F. of L.

Q. Who asked those questions?

A. Well, each—I could not point a finger at one of the representatives that would have asked me that question, but I know that question was asked to me and I told them that there was quite a few there that felt CIO.

Q. Anything further said? [270]

A. Well, the conversation I can't recall at all. I know we were there for about a half hour or so.

Q. Do you recall now anything there that was said by any of the parties at that time?

(Testimony of Charles Spallino.)

A. I think at that time we did suggest a meeting, we did suggest the meeting and a meeting place, and I made a suggestion for this meeting place.

Q. What kind of a meeting?

A. An A. F. of L. meeting, to get a few of the boys at this meeting where these representatives would talk and could give them a line-up on the A. F. of L.

Q. What was said about that?

A. Well, they asked where would be a good place to hold this meeting.

Q. Did you have any answer to that?

A. Yes.

Q. What did you answer?

A. I had suggested that I knew a place up on Griffin and Main, that I knew the proprietor there, that he would let us have his hall, because he only had his dances there on Saturday and Sunday, and he would have the hall available.

Q. Anything further?

A. So he says that would be a good idea, to go ahead and make contacts with this proprietor.

Q. Who said that? [271]

A. Roberts. I could make that statement, that Roberts said that.

Q. Did anything further transpire at that time?

A. Well, it was left up to me to make the arrangements for the meeting and to have everyone notified at this meeting, for this meeting.

(Testimony of Charles Spallino.)

Q. Was there any discussion as to how you were to notify the employees of the meeting?

A. Well, the A. F. of L. had a leaflet out in front of the employees' entrance. They were notified about this meeting. [272]

Q. Were you to have anything to do with the leaflets? A. Did I have anything?

Q. Were you? A. No.

Q. Was anything else discussed at that time?

A. That was all at that time.

Q. Is that all you now remember?

A. That is all.

Q. I will ask you to state whether or not at that time and place anything was said by any of the persons that you have mentioned as being present about union jurisdiction?

Mr. Garrett: Objected to as leading and suggestive.

Trial Examiner Kent: What was that?

Mr. Nicoson: Read the question please.

(The question was read.)

Mr. Garrett: Now, may the last two questions and answers be read, prior to that one, and then the one that has just been read and my objection?

Trial Examiner Kent: Yes.

(The record was read.)

Trial Examiner Kent: He may answer.

Mr. Garrett: I make the further objection it is an attempt by counsel to impeach his own witness. The witness has already testified he has related everything he knew. Now, counsel is testifying.

(Testimony of Charles Spallino.)

Mr. Tyre: The testimony was he related everything he recalled, not everything he knew. Counsel is trying to find out if there was anything else.

Trial Examiner Kent: He may answer.

Q. (By Mr. Nicoson): Do you understand the question now, Mr. Spallino?

Mr. Schullman: At this time, if the court please, may that objection also be entered in behalf of Local 792 and for the additional reason that not only is it leading and suggestive but it tends to be, and is contrary to the testimony of the witness. The witness at two or three separate occasions has already stated that that was all, that was all, that was all. I have taken down his notes as he made the statements.

I realize the liberality with which these proceedings are visited, so far as trying to get all the testimony. When we reach that point, where there is a definite terminus, I think it is beyond the pale of counsel to lead in that manner.

Trial Examiner Kent: You may answer.

Q. (By Mr. Nicoson): Do you remember the question? A. May I have it again?

Mr. Nicoson: Read the question, please.

(The question was read.)

Mr. Garrett: May that question be answered yes or no? Will the Trial Examiner direct that question be answered yes [274] or no?

Trial Examiner Kent: What is it?

Mr. Garrett: May I ask that the Trial Examiner

(Testimony of Charles Spallino.)

direct that the last question asked by the Board's attorney be answered either yes or no.

Trial Examiner Kent: Well, I won't limit the particular question. I think the question purely is an effort, and a proper effort to impress the witness' recollection. He may answer the question.

The Witness: I don't quite understand that last word there, that hard word, "jurisdiction."

Mr. Nicoson: Will you read the question to the witness, please?

(The question was read.)

The Witness: That word "jurisdiction," what is the meaning of that word? I don't get it clear.

Mr. Nicoson: All right. Strike the question.

Q. (By Mr. Nicoson): I will ask you to state whether anything was said at that time by any of the persons you have enumerated as being present, as to what portions of the plant, if any, any of the labor organizations there were interested in. Do you understand that? A. Oh.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial; objected to as leading and and suggestive. [275]

Trial Examiner Kent: He may answer.

The Witness: Well, at that time Roberts made a statement that—well, all the membership, whether they were Teamsters or whether they were Machinists or whether they were Painters, or whatever they were, up until the election, they were going to all be together until the election. After the election each local representative would divide the dif-

(Testimony of Charles Spallino.)

ferent locals. At that time they were all in one for this election that was coming up. That was in the conversation.

Mr. Schullman: I now move the last answer be stricken, in line with my continuing objection to any testimony given by this witness which attempts to bind Local 792, for the clearly obvious reason that none of the parties present belong to or are a party of, have authority to represent or authorization to represent Local 297. I realize my continuing objection goes to this, but at this time I want it set forth for the additional factor that this testimony is the result of an answer to a clearly invalid type of leading question, to supply a deficiency which obviously existed, and an attempt to so supply that deficiency.

I think it is incumbent on this court to strike it out, because, as previously objected to, the witness had finished his testimony on three different occasions. Now, it appears obvious that within the conception of the Board's counsel that there is an attempt to create a situation which wouldn't [276] exist, because the parties there present did not constitute, were not members of, couldn't represent them any more than they could this court.

Suppose they said this Trial Examiner was bound by it? I think it is time we get specific rulings, your Honor, which are in accord with at least the limited elements and principles of law. I say, as far as my clients are concerned, we realize we are bound by the rulings. We urge definitive rulings

(Testimony of Charles Spallino.)

on such type of questions. We reiterate our objection and our motion to strike.

Trial Examiner Kent: The record may remain.

Mr. Garrett: Now, I want to move to strike, also, if your Honor please, because we feel that in replying to the last question that this witness was permitted, under the guidance of the Trial Examiner, in response to a leading question, to testify about a matter which he did not remember and concerning a term which he did not understand.

Mr. Schullman: May I go a point further, if the court please. I hope this is not taking any further time and extent than I have to to protect the litigant, that if a ruling is made by the Trial Examiner, and I realize it is unintentional, and were it intentional I would be required in my duty representing my client to charge that as the type of intentional misconduct which would prejudice the proceeding to such an extent—I am merely indicating that the [277] courts have held where an appliance is made of attempted material after leading question, a response is made to the leading question and the court permits that, that omission tending to supply when it was not originally given voluntarily on direct examination, was grounds for a complete reversal and have been held to constitute objectionable conduct. I am talking now not about the rules of the NLRB, but I am talking about courts of law, and I will be glad to give you a very extensive brief on that.

No. 11919

**United States
Circuit Court of Appeals
For the Ninth Circuit.**

NATIONAL LABOR RELATIONS BOARD,
Petitioner

vs.

**O'KEEFE AND MERRITT MANUFACTURING
COMPANY, etc.,**

Appellees.

**UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., and
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Intervenors.

**Transcript of Record
In Four Volumes
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(Testimony of Charles Spallino.)

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): Was there anything further said on this subject at that time?

A. That is about all.

Q. Was or was not anything said by anybody present at that time and place concerning the employees of the shipping department?

Mr. Garrett: Objected to as leading and suggestive, and secondly, as incompetent, irrelevant and immaterial.

Trial Examiner Kent: He may answer for the same reasons. It is clear to me that counsel is attempting, I think properly, to refresh the witness' recollection. For that purpose, I think the question is proper.

Mr. Garrett: I am willing that counsel should show us a written statement signed by the witness so that we might be sure that these questions were an attempt in good [278] faith to refresh the recollection of the witness. I would not object to the witness being shown his own statement, if your Honor please.

Mr. Schullman: I join in that, because this is not the legal procedure by which you refresh a witness' recollection. That is true not only with courts of law, it is true under the NLRB. When you refresh a witness' recollection you do not refresh it on the subjective thought of counsel, you refresh it from written indicia which he prepared in advance, which the witness has failed to testify from in extensive form, you refresh it from other

(Testimony of Charles Spallino.)

matters which the witness has prepared, and something he gave to the counsel, but you do not refresh it from an exploratory inquiry after a witness has repeatedly said he has concluded his testimony.

I would like to see a case where you can go to that extent, any place, in refreshing a witness' recollection. This is beyond the confines of law in the Federal Court. It is beyond the confines of law within the State of California, the extent to which you may refresh a witness' memory, and it is not the proper procedure by which to refresh a witness' memory.

Trial Examiner Kent: Well, I have ruled.

Mr. Schullman: I realize there is nothing we can do except object to the ruling.

Mr. Tyre: Well, then, object and let's go on.

Mr. Schullman: If you don't like it, Mr. Tyre, you may go on, but I am going to stay to protect my record with every conceivable legal method that I can.

Trial Examiner Kent: Well, that is the right of counsel.

Mr. Schullman: If you don't want to, you may leave.

Mr. Tyre: I think, Mr. Examiner, you have given counsel a standing objection to this line of testimony. I don't think it is proper for counsel to go on and urge an objection and argue it at length. If counsel wants to extend this record, we will deem it extended. I don't think we have to

(Testimony of Charles Spallino.)

waste time of counsel here listening to silly argument.

Mr. Schullman: I move—May I ask——

Trial Examiner Kent: Let us proceed.

Mr. Schullman: May I ask, your Honor, that the proceeding gratuitous remarks of counsel be deleted from the record, as being merely a self-serving assertion within the limited scope of counsel?

Mr. Tyre: You better go to law school.

Mr. Nicoson: I suggest we try this case and cut out this stuff.

Mr. Tyre: That is stipulated.

Mr. Nicoson: Will you read the question to the witness, please? [280]

(The question was read.)

Mr. Garrett: Since my objection has been overruled, may we again request that the Trial Examiner direct the witness to answer that question yes or no?

Trial Examiner Kent: I will grant that.

Mr. Nicoson: I have no objection to that.

Trial Examiner Kent: Proceed and answer yes or no.

The Witness: Yes.

Q. (By Mr. Nicoson): What was said and who said it?

A. This Teamster fellow, I can't recall his name at the present, rather confusing, he did—well, in fact, I had suggested that he wanted to meet the—

(Testimony of Charles Spallino.)

he wanted to know how many boys were in the shipping department, and I pointed out that he could see these boys at 8:00 o'clock in the morning, and that I would talk to their foreman and talk to the men and get them together in the morning. That was about 8:00 o'clock in the morning, that this representative of the Teamsters Union came to the shop and——

Q. Wait a minute. Let's just stay in one meeting at a time. Was that all that was said upon that subject?

A. Yes, that I would get the boys together for him for 8:00 o'clock in the morning.

Q. Will you state for the record if at that time and place when this conversation took place and at all times during the conversation Mr. Collins was present? [281]

A. Yes.

Mr. Garrett: Objected to as leading and suggestive. May I have the last question and answer read?

(The record was read.)

Mr. Garrett: I take it that my objection is overruled, your Honor?

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Nicoson): Did anything else happen at that time or was said at that time that you now recall?

A. Well, outside of making that plan, I can't recall.

Q. Did you yourself do anything about a meet-

(Testimony of Charles Spallino.)

ing with the shipping department employees?

A. I did.

Q. What did you do?

A. Well, I went to the shipping department and told them to tell the boys.

Q. Who did you see there?

A. Well, there was Bob White. I told Bob White. [282]

Q. Who is Bob White?

A. He is the shipping clerk.

Q. All right.

A. I told him that this fellow from the Teamsters' Union was coming down there at 8:00 o'clock in the morning, and he was going to talk to the boys, to his—all his men, and at 8:00 o'clock to have them outside there, and this fellow here was going to explain to the—this representative of the Teamsters' Union was going to give the boys all the information on the Teamsters' organization.

Q. Did you tell Mr. White where you got this idea, thought or plan?

A. Well, I suppose he knew that we were organizing the place.

Q. No, not what you supposed. Did you tell him?

A. Well, he knew.

Q. What did you tell him?

A. Well, I told him that they were going to organize the Teamsters and this fellow here was going to come down and give them the information.

Q. Did you understand my question? Will you read the question back and see if he understood?

(Testimony of Charles Spallino.)

(Question read as follows: Did you tell Mr. White where you got this idea, thought or plan?)

Q. (By Mr. Nicoson): Did you understand that question, Mr. [283] Spallino?

A. Yes. Well, from Collins' office.

Q. Did you tell Mr. White where the plan, thought or idea came from?

A. Well, apparently all the foremen in there——

Q. Did you tell him?

Mr. Garrett: Objected to as not responsive to the question, and the question is of leading character anyhow. If your Honor please, I object to it on that ground.

Mr. Schullman: Your Honor, if I may so state, I haven't got any authority to state, because I think Mr. Stevenson——

Mr. Nicoson: I am sorry you people seem to be more concerned about hanging somebody than seeking to get the meat of it. Let us get the meat of it.

Mr. Schullman: Your Honor, Mr. Stevenson is not here.

Mr. Nicoson: What we would like to do is to get the meat of it.

Mr. Schullman: Mr. Stevenson is not here. I do not represent the Teamsters, but I do press the objection for the Teamsters until such time as he reverses my objection in his behalf.

Mr. Nicoson: I question counsel's right to appear for the Teamsters or do anything for them.

(Testimony of Charles Spallino.)

Mr. Schullman: Then I will object for myself, that the testimony of this witness in reference to what he told a [284] shipping clerk is double hearsay and that it cannot be taken and that it is inadmissible for such purposes. You are having him tell somebody what somebody else told him.

Trial Examiner Kent: I am inclined to agree to some extent with counsel, unless the authority of the shipping clerk is brought out in the record. I don't know what the shipping clerk's duties are.

Q. (By Mr. Nicoson): Do you know what the shipping clerk's duties are, what Mr. White's duties, do you know what they are?

A. Well, he is in charge of the shipping and he is in charge of the men in the shipping department, as far as I know.

Mr. Nicoson: Now, may I put the question to him? Will you read it to him?

(Question reread as follows: Did you tell Mr. White where you got this idea, thought or plan?)

Q. (By Mr. Nicoson): Do you understand that question? A. Yes, I do.

Q. All right, did you tell Mr. White that?

Mr. Garrett: May that question be answered yes or no?

Mr. Nicoson: You may answer that yes or no.

A. Well, I can say no to that.

Mr. Collins: In view of the answer of the witness, I now move the previous testimony concerning the fact that he [285] told Bob White to have the

(Testimony of Charles Spallino.)

Teamsters assemble on the following morning be stricken from the record.

Mr. Nicoson: Well, I think that I would oppose that on two grounds, one that he has testified that he is in charge of the department, and two, he has testified very clearly that it originated in Mr. Collins' office, and pursuant to a plan originating in Mr. Collins' office, he was putting it into execution.

Trial Examiner Kent: The only thing is the witness' testimony did not seem that to me. His testimony was that insofar as he knew, White was in charge of the shipping department.

Mr. Nicoson: What else can a witness testify to, except so far as he knows.

Trial Examiner Kent: What does it mean?

Mr. Nicoson: That is a matter of cross examination, your Honor.

Mr. Collins: I don't think—we don't intend——

Mr. Nicoson: You test the witness' knowledge on cross-examination. You don't do that here.

Trial Examiner Kent: It still to my mind doesn't indicate the point of the supervisor in the shipping department, it is substantially a guess that he is.

Mr. Collins: May I have a ruling on my motion?

Trial Examiner Kent: I will sustain the motion to [286] strike.

Mr. Nicoson: May I have the motion read?

Trial Examiner Kent: I think I will have to reverse my ruling, in view of the witness' testimony. He testified he told White he got those instructions

(Testimony of Charles Spallino.)

or was transmitting a request from Mr. Collins. That, I think, possibly does not require that White be a supervisor.

Mr. Garrett: There is no such testimony in the record, according to my notes.

Mr. Nicoson: Are we going by Mr. Garrett's notes or are we going by the official transcript?

Mr. Garrett: I challenge you to show me——

Trial Examiner Kent: Challenge the record.

Mr. Nicoson: Don't challenge me. I didn't raise it.

Trial Examiner Kent: Challenge the record. Read his prior answer in reference to the statement concerning Mr. Collins.

(The record was read.)

Mr. Tyre: There was something after that. [287]

(The record was further read.)

Trial Examiner Kent: I don't see the reference to Mr. Collins I thought was in there—I might be confused on something else—you pointed out in or about this testimony.

Mr. Nicoson: Sir?

Trial Examiner Kent: The testimony that he was relating about making this request, of Mr. Collins. I have a faint recollection that was in there. It doesn't seem to be in there.

Mr. Nicoson: The witness' testimony is this:—I will stand on the record—that in the meeting with Mr. Collins and the AFL representatives, which he mentioned, and particularly the Teamsters, the

(Testimony of Charles Spallino.)

plan was hatched for a meeting of the shipping department employees.

Mr. Spallino undertook at that time and place to arrange such meeting, and pursuant to that plan it was conceived right in Mr. Collins' presence, and so far as the record shows, without any adverse comment by him, that Mr. Spallino there put into execution the plan that was conceived in Mr. Collins' office.

Mr. Garrett: I believe the testimony to which Mr. Nicoson refers doesn't refer to this shipping department meeting, and is the testimony that this man gave when he said that he arranged there in the meeting in Collins' office to have a general meeting for Roberts of the Stove Mounters to [288] to be held at Main and Griffin Avenues. Obviously the shipping department meeting, the following morning, isn't the one to which the testimony alluded.

Mr. Nicoson: May I respectfully differ with counsel as to the witness' testimony? The witness testified about his participation in arranging for two meetings, one at the corner of Griffin and Main, and the second was with the shipping department employees.

His first testimony was about the fact that he knew the fellow that had the place at Griffin and Main. I am not sure. He testified he would arrange to get this hall to hold the meeting for the AFL. He testified there was the conversation about the shipping department employees and that in the

(Testimony of Charles Spallino.)

presence of those assembled he undertook to arrange a meeting of the shipping department employees so that the Teamsters' representative could come down and talk to them. He did that upon the request of the Teamsters' representative as to how the employees in the shipping department stood. I think that is a correct summation of his testimony.

Trial Examiner Kent: Well, it is a little too deep for me, offhand. I will reserve my ruling now, pending a consideration of the record, and reverse my ruling on Mr. Collins' motion to strike.

Mr. Nicoson: I will ask Mr. Collins if he will stipulate R. J. White is the supervisor of the shipping department. [289]

Mr. Collins: I will stipulate, Mr. Nicoson, that stipulate R. J. White is the supervisor of the shipping department, but not—I don't know what you mean by a supervisor.

Mr. Nicoson: I will be content with that.

Trial Examiner Kent: What is that?

Mr. Nicoson: He will stipulate that R. J. White is the foreman of the shipping department.

Trial Examiner Kent: What is the nature of his duties, Mr. Collins? Does he do manual work himself there?

Mr. Collins: I was attempting to expedite the matters here. It has been called to my attention we don't even have a shipping department. We have a receiving department.

Mr. Nicoson: You do have Mr. R. J. White; do you not?

(Testimony of Charles Spallino.)

Mr. Collins: Let me confer with somebody here.

Reference in the record has been called to my attention that Mr. White is the shipping department. He is the whole thing; he is it. He is the foreman and crew; his own boss.

Mr. Nicoson: Well, I am content to accept the stipulation as to his being the foreman. I can't stipulate he is the whole crew because I think the evidence will show he wasn't.

Mr. Collins: The situation is this, Mr. Nicoson: O'Keefe and Merritt haven't made anything since the war. They stopped last August. There is nothing to ship. They will be in production on stoves soon, we hope.

Trial Examiner Kent: Well, what is the present status [290] of the stipulation?

Mr. Nicoson: Well, I stated that I was willing to accept his stipulation that R. J. White was the foreman.

Mr. Garrett: I will object to the stipulation. He couldn't be foreman with no one under him.

Trial Examiner Kent: What is your objection?

Mr. Collins: Inasmuch as I would like to extend this courtesy to Mr. Nicoson, I find I can't so stipulate because there is no department he could be foreman of.

Trial Examiner Kent: There wasn't at that time he has testified to?

Mr. Collins: I am basing my remarks on the statement of my clients there is no department there, at that time they are talking about.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I will grant the motion to strike then.

Q. (By Mr. Nicoson): At that time, Mr. Spallino, had you ever had occasion to go into the shipping department?

A. Yes, at the door. It said, "Shipping". I think that was shipping department.

Q. Did you ever have occasion to go in there?

A. Yes.

Q. How often would you go in there?

A. Well, I tell you, I went there at will; in fact, Johnny Levascos was in there on one trip with me.

Q. How often would you go in there, did you say?

A. At will.

Q. Well, how often is "at will"?

A. Well, for two or three days I think we were in there. Johnny Levascos was in there several times with me, two or three days. I think we made four or five trips in there.

Q. Did you, after this meeting in Mr. Collins' office, go into this room marked "Shipping"?

A. Shipping department? Yes.

Q. Did you there see Mr. R. J. White?

A. Yes.

Q. Did you see anyone else in there?

A. Well, there was Jack Miles, he happened to be in there. He is one of the truck drivers. I don't recall all the boys' names.

Q. Did you see anybody in there?

A. Yes.

Q. Approximately how many did you see in there?

(Testimony of Charles Spallino.)

A. I would say about four fellows in there, four or five.

Q. Did you see what they were doing?

A. Well, they were waiting, waiting for 8:00 o'clock.

Q. Would that be before working hours?

A. Yes.

Q. Had you ever gone into the shipping department during working hours? [292] A. Yes.

Q. Had you seen anyone in the shipping department, other than Mr. White?

A. Well, his assistant. I can't recall his name.

Q. Anyone else?

A. There is a boy there that does the delivery of the receiving material that is received. He brings it into the departments; I can't recall his name.

Q. Was there anyone else you saw in there?

Mr. Collins: I move the last answer be stricken because it obviously is not responsive to the question of counsel. He stated the man in there now does the receiving. The attempt, as I understand it, is to substantiate the fact Mr. White is head of the shipping department. Now we are having somebody that does some receiving as being—it is alleged he is now White's assistant, when, as a matter of fact, his own testimony now is he is the receiving end of it, instead of the shipping end of it.

The Witness: May I answer that?

Mr. Nicoson: Strike the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): On the occasion that you have testified that you have been in this room "Shipping", have you ever seen more than Mr. White in there? A. Yes, the whole crew.

Q. How many is in the whole crew? [293]

A. At that time I could say about eight.

Q. Did you ever see what they were doing during working hours?

A. Yes. They do delivering and receiving.

Q. Now, what do you mean by delivering and receiving?

A. They still have—had delivered generators.

Q. Just answer the question. What do you mean by delivering and receiving?

A. I see material going out and I see material coming in.

Q. What did these employees or these persons have to do, if anything, with the material going in or the material going out?

A. Well, the truck driver—naturally he loads his truck if he has any material to take out, such as generators, which they have. They are still making generators now.

Q. Were all of these people you talk about as the whole crew teamsters?

A. Teamsters? Yes.

Mr. Collins: Mr. Trial Examiner, I would like—

Mr. Nicoson: Just a second, please.

Q. (By Mr. Nicoson): Do you understand that question? Did you listen to it?

A. I will have to hear it again.

(Testimony of Charles Spallino.)

Mr. Nicoson: Will you put the question and then Mr. Collins has an objection. [294]

(The record was read.)

The Witness: Well, they are truck——

Mr. Collins: Just a moment. I object at this time to this line of testimony. This witness is not competent to testify to this. He obviously don't know the difference between the shipping department and the receiving department. He is not qualified to answer the line of questioning being put to him. We are just confusing the record and not getting anything——

Mr. Nicoson: Strike the question.

Q. (By Mr. Nicoson): If you know, of your own knowledge, were these persons you have described as being the whole crew teamsters?

A. They are truck drivers. Some of them work on the floor. As far as I know, as long as I have worked there, that has been the shipping department.

Mr. Collins: May I take this witness on voir dire?

Mr. Nicoson: Wait until he finishes the answer and you can do what you like.

Q. (By Mr. Nicoson): Have you finished your answer?

A. The truck drivers and the fellows off the floor, like I said a while ago, one of the fellows in the office at the time is the fellow that does the delivering of the receiving material that is received. He delivers it from department to department,

(Testimony of Charles Spallino.)

wherever the material is going to. As long as I have worked there I know that is the shipping department, it has been the shipping department, it has still the sign of "Shipping Department." They have done receiving there, because that is the only place there, and in the back end is where they do all the receiving. [296]

They don't have an office in the back. There is a sheet metal, all steel and materials go in the back door. It is all done right in one place at the front of the building.

Mr. Collins: Mr. Spallino, do you know, of your own knowledge—I mean of your own knowledge, not something you just suspect or something you have heard somebody say around the place—do you know, of your own knowledge, whether Mr. Anderson is the head of the receiving department or whether Bob White is the head of the receiving department?

The Witness: I would say Anderson.

Mr. Collins: Do you know? Yes or no. The next question I am going to ask you is how you know. I want to get the answer straight, before you start.

The Witness: I will tell you I don't know.

Mr. Collins: That is all.

The Witness: Things change overnight in that place.

Q. (By Mr. Nicoson): Were these persons whom you described as the whole crew, with the exception of those you have termed as truck drivers,

(Testimony of Charles Spallino.)

working in this room which you have described as the shipping, or shipping department?

A. Yes.

Mr. Collins: Objected to as immaterial; not tending to prove or disprove anything at issue.

Q. (By Mr. Nicoson): I will ask you if you know whether or not these persons that I have just spoken about work with Mr. [297] R. J. White.

A. They work with him?

Q. Yes. A. He is the boss.

Mr. Collins: Just a moment. If the court please, I move to strike out this statement of the witness unless he now wishes to change his testimony on voir dire, in which he stated he didn't know who was the boss of these departments.

Mr. Nicoson: No, he didn't; he didn't. He merely said he didn't know whether Anderson was head of the receiving department. That was all you asked him. You didn't even mention White's name.

Mr. Collins: Miss Reporter, will you read the questions I propounded to this witness and his answers?

(The record was read.)

Mr. Nicoson: I guess maybe I owe counsel an apology. He did mention Mr. White.

Mr. Collins: I accept the apology, Mr. Nicoson.

Mr. Nicoson: I suppose I was asleep there and let you put that two-pronged question to the witness. Very well. I will just have to recall him after a further witness. That is O.K.

(Testimony of Charles Spallino.)

I take it your Honor has ruled I can't go into that meeting there on account of the position that White has has not, to your satisfaction, been established. [298]

Trial Examiner Kent: I seem to have a misunderstanding of the record. If the record did show that Mr. Collins requested—or there is a reasonable fair inference Mr. Collins requested him to contact some of those people and arrange for meetings, why, I think the testimony would be admissible.

Mr. Nicoson: I offer to prove by this witness, if he were permitted to answer, that he would testify that Robert J. White is the foreman of the shipping department; that pursuant to his meeting with Mr. Collins and the A.F.L. persons which he mentioned in the room at that time he went to Mr. White and he told him, he requested him to assemble the employees of the shipping department, including the drivers, for the purpose of letting Mr. Blaney, a representative of the Teamsters' Union, speak to them concerning organizing them and having them signed up in the Teamsters;

That Mr. White did arrange such a meeting just prior to working hours of these employees directly outside of the door of the shipping department; that a representative of the Teamsters, the name of which is unknown to the witness, did meet with these employees in the presence of R. J. White;

That the representative of the Teamsters' explanation and discussion with the employees was incon-

(Testimony of Charles Spallino.)

clusive and unsatisfactory to the employees, and that the witness thereafter arranged for a further meeting a day or so following, at which time Mr White again assembled the employees outside [299] the shipping department door, and this meeting was attended by a Mr. Blaney of the Teamsters, at which Mr. Blaney told them about the Teamsters, work of the Teamsters, and then and there in the presence of Mr. White solicited and did obtain members into the Teamsters' organization.

Mr. Collins: To which offer of proof, on behalf of respondents O'Keefe & Merritt, I object on the ground it is assuming a fact not in evidence. This witness has just testified he doesn't know what Bob White's position was, or in substance he didn't know.

On behalf of the respondent Pioneer Electric Company and the co-partners and members thereof, I object upon the ground that it is not binding upon them, because there is no showing that any representative of theirs was at any of these meetings, either at the meeting that counsel is referring to or at the meeting alleged to have been called in my office.

Trial Examiner Kent: This meeting was held outside of the plant property, was it, or was it not? In your offer of proof you said outside the door of the shipping department.

Mr. Nicoson: That is right.

Trial Examiner Kent: You mean in the plant proper, or outside?

(Testimony of Charles Spallino.)

Mr. Nicoson: On the public street.

Trial Examiner Kent: Have you other testimony to offer?

Mr. Nicoson: Beg your pardon? [300]

Trial Examiner Kent: Have you other testimony to offer that White had supervisory authority there?

Mr. Nicoson: I would like to read into the record——

Mr. Collins: May we have identified what you are reading from?

Mr. Nicoson: Oh, definitely, if you will just wait.

Mr. Collins: Before you read from it.

Mr. Nicoson: Yes, before I read from it you will find out what it is. From the official transcript in the matter of O'Keefe and Merritt Manufacturing Company and O'Keefe and Merritt Division, Local 2018, affiliated with United Steelworkers of America, C.I.O., Case No. 21-R-2298, at a hearing before the National Labor Relations Board, held at Los Angeles, California, on March 29, 1944, page 26, being the testimony of Fred F. Rotter. I will also read from page 25 in order to show who Rotter is.

Mr. Garrett: I object to reading from the transcript in another case.

Mr. Collins: It is not the best evidence. It is the rankest kind of hearsay. There would be no opportunity to correct the testimony that is about to be read if permitted to be read in evidence. There

(Testimony of Charles Spallino.)

is no showing it is possible not to get Mr. Fred Rotter down here himself. I can have him down here in a half hour, if you want to question the man.

Trial Examiner Kent: I think that might be the most regular way to put the testimony in.

Mr. Nicoson: I submit the Board takes judicial knowledge of its own proceedings. If I am precluded I would like, by way of an offer of proof, to read——

Mr. Collins: I am not through with my objection, Mr. Trial Examiner. In addition to which I object upon the ground there is no representative of the O'Keefe and Merritt Company, that is, counsel here, to correct the purported testimony they are about to read from a book here. There is certainly no representative of these various A.F.L. locals here. It is the most highly irregular thing to be imagined, not to even stand by the technical rules of evidence. It is the most unfair thing I can imagine.

Mr. Garrett: I am going to object generally to reading into the record from the proceedings in another case on the pretense of making an offer of proof. Evidence in another case is purely hearsay here by a witness whom I didn't have the right to cross-examine or the opportunity to cross-examine, and under the circumstances where there is no showing that the witness can't be produced here to take his place on the stand to testify under oath in this proceeding and submit to cross-examination.

Trial Examiner Kent: I think, in view of Mr.

(Testimony of Charles Spallino.)

Collins' offer to produce that witness here, we should take the [302] testimony that way.

Mr. Nicoson: Very well. I offer to prove, if permitted to read into the record, that the transcript that I have heretofore described will reveal on pages 25 and 26 the following:—

Mr. Garrett: May I have a ruling on my objection to Mr. Nicoson being permitted to read into the record testimony in another case, as it is a denial of due process to my clients in this proceeding. That is not a proper offer of proof, and I think everyone here knows it.

Mr. Collins: I wish to join Mr. Garrett in the objection. I wish to further object on the ground there is no necessity to make this offer of proof. We will produce the witness.

Trial Examiner Kent: I will sustain the objection. I will suggest that the witness that testified at that time be brought down, in accordance with Mr. Collins' offer.

Mr. Nicoson: Very well. Your Honor, I would like now to ask permission for the reporter to take as a rejected exhibit portions of pages 25 and 26 of this transcript, which I have heretofore identified.

Mr. Collins: I object to the introduction of the same in evidence on the grounds heretofore stated.

Mr. Garrett: Objected to as being taken in as an rejected exhibit and being placed in this record. Anyway, [303] it is hearsay.

Mr. Nicoson: I don't suppose counsel can dictate

(Testimony of Charles Spallino.)

to me how I make my record. I don't try to dictate to him.

Mr. Collins: I make an objection.

Mr. Nicoson: I think perhaps I have as much right and interest in making this record as anyone here. Your Honor has refused to accept it in evidence. I have a right to put it in the record to show what your Honor has refused to accept in evidence.

Trial Examiner Kent: I think you have. If you want to make a written offer of proof——

Mr. Nicoson: I would like to. Reading from page 25——

Mr. Garrett: May I have a ruling on my objection? This isn't good, putting it in as a rejected exhibit.

Trial Examiner Kent: I will sustain the objection. I will let you submit a written offer of proof.

Mr. Nicoson: In other words, you are saying I can't read this now?

Trial Examiner Kent: Yes.

Mr. Nicoson: As a rejected exhibit?

Trial Examiner Kent: Yes.

Mr. Nicoson: It has to be reduced to writing?

Trial Examiner Kent: No. I see no reason why it can't go into the record as a rejected exhibit.

Mr. Garrett: Your Honor, that is the same as testimony. [304]

Trial Examiner Kent: We will take a short recess and you can submit it to the reporter and

(Testimony of Charles Spallino.)

she can copy it into the record as a rejected exhibit.

Mr. Collins: You might as well let Mr. Nicoson testify.

Mr. Nicoson: Very well. I will indicate the portions that I would like to have the reporter copy into the record, and I now hand her a copy of the official transcript of the proceedings I have heretofore identified, and direct her attention to page 25 and page 26, and it carries on over on page 27. I have marked on the outside with red pencil the portions I would like to have copied into the record.

I think this perhaps is very improper, because it puts upon the reporter the burden of putting in the record that which I deem my duty to do.

It is her responsibility and if any mistake is made, then I didn't read it into the record, she copied it and she copied it wrong. I think that is an unwarranted burden to put on the reporter. If that is your ruling I will bow to it.

Trial Examiner Kent: Let me ask a further question. This was the record made, was it, in the case in which the petition was filed by the C.I.O. in the consent election?

Mr. Nicoson: No.

Trial Examiner Kent: It was not?

Mr. Nicoson: No. [305]

Trial Examiner Kent: All right.

Mr. Garrett: What is this record from, may I ask?

Mr. Nicoson: This is the record in Case No. 21-R-2298. There is outstanding a formal decision

(Testimony of Charles Spallino.)

of the Board rendered in this matter, issued by the National Labor Relations Board on the 29th of April, 1944, by Harry A. Millis, Gerard P. Reilly, John M. Houston, members of the National Labor Relations Board. It is an official decision based upon that particular record.

Mr. Garrett: That shows in point of time it had no relation to this meeting that this witness is purporting to testify about, which occurred in October, 1945, well over a year and a half after the decision had been rendered in this R case to which counsel alludes. I don't even know who the parties to it were. How could anyone's testimony as to his status in April, 1944, have any bearings on what his capacity was in October, 1945? I object to this being physically in the record.

Trial Examiner Kent: It is in the record as a rejected exhibit. It is not in as a formal exhibit.

Mr. Garrett: Can't it go in with the exhibits, rather than being a physical portion of the record?

Trial Examiner Kent: It is in a copy of the general records in Washington.

Mr. Garrett: There is no foundation which stands. [306] There is nothing to show that it has any materiality to this situation. It is an offer, in my opinion, that is not made in good faith, if your Honor please. Here is an offer of proof, offered this court, as relating to the foundation for a conversation attempted to be adduced here dated a year and a half after the conclusion of the very

(Testimony of Charles Spallino.)

proceedings that counsel is trying to get physically into this record.

Mr. Nicoson: Have you finished, Mr. Garrett?

Mr. Garrett: Although I will ask your pardon if I made any misstatements.

Trial Examiner Kent: We might proceed.

(The following is incorporated as a rejected exhibit.

“FRED F. ROTTER,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

“Direct Examination

“By Trial Examiner O'Brien:

“Q. I would like to have you state your name so that everyone can hear it.

“A. Fred F. Rotter.

“Q. And your address?

“A. 2212 Townley Drive.

“Q. What is your position?

“A. Employment and assistant personnel man at the O'Keefe & Merritt Manufacturing Company. [307]

“Q. Was Board's Exhibit No. 3 prepared under your supervision?

“A. You are referring to this list of employees?

“Q. Yes. A. Yes.

(Testimony of Charles Spallino.)

“Q. In general, I can get at this by a large number of direct questions, but if it is possible for you to tell us who the general manager of the company is, and so on down the line, and what departments there are, who is in charge of each department, and so on, it would be much better.

“A. Mr. D. P. O’Keefe is president. Mr. R. J. Merritt is treasurer and secretary. Mr. W. J. O’Keefe is plant superintendent.

“Q. Is Mr. W. J. O’Keefe in charge of operations there? A. Yes.

“Q. Who are the supervisors immediately under him, and what are their duties?

“A. The various supervisors under Mr. W. J. O’Keefe is M. S. Smith, assistant plant superintendent, and the following foremen in the respective departments: R. J. White, shipping department; William Wheeler, manager of production in the generator unit department; Richard Carno, foreman of the paint department; [308] R. Reinicke (foreman of the impregnation and balancing department; Gus Aschieris, foreman of the press department; S. J. Hamilton, foreman of the tool room department, and machine production department; Manual Ortega, foreman of the shear department; and L. Matranga, foreman of the foundry department.”)

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Mr. Spallino, you recall about having testified about the time you were in Mr. Collins' office and the A.F.L. people were there, with relation to the hall at Griffin and Main. Do you recall testifying about that? A. Yes.

Q. After that meeting, did you do anything about the hall at Griffin and Main? A. Yes.

Q. What did you do?

A. I went to the telephone and called Griffin and Main, that is, the proprietor there. His name is Carman Testa. I asked him if the hall was available; it was on a Wednesday night. He said, "Sure." He said I could have his hall for that Wednesday night. [309]

Q. And thereafter did anything in connection with the hall occur?

A. Well, the leaflet was out that the meeting was to be held at the Griffin and Main Cafe that night at, I think it was 8:00 o'clock.

Q. What meeting?

A. The A. F. of L. Well, it was an organizing meeting.

Q. Was such a meeting held? A. Yes.

Q. Did you attend the meeting at Griffin and Main you have just described? A. I did.

Q. Did you see Mr. Blaney there?

A. He was there.

Q. Did you see Mr. Lazzerini there?

A. Not the first meeting.

Q. How many meetings were held there, if you know?

(Testimony of Charles Spallino.)

A. We had two meetings, and then one initiation meeting.

Q. At this first meeting, were applications in any of the A. F. of L. organizations passed out to the persons assembled? A. Not that I recall.

Q. Pardon me. Did you say you had a conversation with Mr. Blaney that first night?

A. Well, yes, I had conversation with several of the fellows there, I was introduced to each one that were there. [310]

Q. Did you have any conversation with Mr. Blaney concerning the boys in the shipping department?

A. Yes, because the showing was not very good there that night, there were only about 28 fellows that attended the meeting, and well, he asked me about the shipping department, how the boys stood over there, and you see the first—can I go back now?

Q. No, you better stay right on this meeting.

A. Well, that the boys didn't quite understand a whole lot about different scales, union scale of truck drivers, and that the boys, that was the second meeting, that Blaney came up to the plant.

Q. Well, before Blaney came to the plant, you had attended this meeting with him, had you or had you not?

A. Well, I did talk to him *on* Collins' office the first time.

Q. Well, did the meeting occur before you talked to him in Collins' office or afterward?

(Testimony of Charles Spallino.)

A. One of the meetings at the shipping—

Q. No, the meeting in Griffin's Hall.

A. No, that was afterwards.

Q. How long afterward?

A. Oh, I would say within—well, it was the Wednesday following. I don't remember the date. I know it was within two or three days, I would say.

Q. I believe you said you did not talk to Mr. Lazzerini the first meeting?

A. No, he wasn't there.

Q. Was he present at the second meeting?

A. He was.

Q. When was the second meeting?

A. That followed, the following week.

Q. Did you talk to Mr. Lazzerini at that time?

A. Yes, I—

Q. Did you have anything to say to Mr. Larzerani concerning the employees of the shipping department?

A. To Mr. Lazzerini concerning the shipping department, no.

Mr. Collins: May we go off the record a moment here?

Trial Examiner Kent: We will take a recess for five minutes.

(Short recess.)

Trial Examiner Kent: You may proceed.

Mr. Nicoson: Well, we have got a couple of absent members.

Trial Examiner Kent: You may go ahead.

Q. (By Mr. Nicoson): Do you know, Mr. Spal-

(Testimony of Charles Spallino.)

lino, a man by the name of Rotter? A. Yes.

Q. Do you know what his first name is?

A. Fred. [312]

Q. Do you know what his business or occupation is? A. Well, he is the personnel manager.

Q. For what concern or company?

A. Well, he could be representing both companies, I guess.

Q. What do you know him as?

A. Well, O'Keefe & Merritt.

Q. Did you at any time attend any meeting in which Mr. Rotter was present? A. Yes.

Q. Where was that meeting held?

A. In Collins' office.

Q. Is that the same Collins office you have been talking about? A. Yes, Cecil Collins.

Q. Who else was present?

A. Joe Spallino and Johnnie Levascos.

Q. Is Joe Spallino the same person whom you have previously identified as your brother?

A. Yes, he is my brother.

Q. At the time of this meeting, do you know what position Mr. Joe Spallino held, if any?

A. Superintendent.

Q. Of what? A. O'Keefe & Merritt.

Q. Now, when did this meeting occur? [313]

A. When?

Q. Yes.

A. That was within—let's see. It was around October, I would say, near the election, within a——

(Testimony of Charles Spallino.)

Mr. Nicoson: Can we stipulate that the election was held on November 20, 1945?

Mr. Garrett: So stipulated.

Q. (By Mr. Nicoson): Now, with relation to the election, was it before or after?

A. It was before.

Q. How long before?

A. I would say within two weeks, or between that.

Q. What was said at that time and place and who said it?

A. Well, I began, I began the conversation that I was—well, I had too much on my hands, I was doing a little too much running around at this campaign for the A. F. of L., and my other duties, that I was as local president, and I told them that was too much, and I thought I was not really getting anything for all that extra work, and it was just a little too much for me, and I think that Mr. Collins made a crack that if I was afraid——

Mr. Collins: Just a moment. I move that that characterization of the witness, a crack, be stricken from the record.

Mr. Nicoson: I join with counsel.

Trial Examiner Kent: Yes. Try to always state what the [314] other person said and what you said, because after all somebody else has to draw the conclusions as to what they meant.

Q. (By Mr. Nicoson): What did Mr. Collins say?

(Testimony of Charles Spallino.)

A. He said, "You are not afraid to stick your neck out. If you want to better yourself, you are working with Joe Spallino there, he could easily give you a nickel or a ten-cent raise. There is Fred Rotter right there," he says, "Why don't you give your brother a 10-cent raise?"

Q. Anything further said on that subject?

A. Well, Joe and Fred was going to take that up, and in the meantime there was a phone call comes over the phone.

Q. A phone call, what about the phone call?

A. Well, from what I gathered on the conversation——

Q. Who talked on the telephone, if anybody?

A. Collins was at the phone.

Q. All right.

A. And he put his hand over there for a little while and said it was John Despol on the phone.

Trial Examiner Kent: Who is he?

The Witness: John Despol? John Despol is the CIO representative.

Q. (By Mr. Nicoson): And did you hear anything that Mr. Collins said to Mr. Despol or to the person on the telephone?

A. Yes, there was a question there whether we were organizing the A. F. of L. on company time.

Q. Did anybody say anything about that?

A. Well, he says——

Q. What do you mean, who is he?

A. Collins.

(Testimony of Charles Spallino.)

Q. You see, we can't get that in the record if you point to somebody and say he.

A. Collins, he suggested that he would get the superintendent of the plant and the personnel man there to find out if there is anyone going around on company time signing up the A. F. of L. fellows on company time, and at that time Joe Spallino and Fred Rotter were sitting in the same room with Collins and Levascos, Fred Rotter and Joe Spallino and myself. [316]

Q. Did Mr. Collins say anything further over the telephone that you heard?

A. Well, the conversation really got to where Johnny was taking up too much of his time.

Q. No, no, over the telephone.

A. Over the telephone, and that was the conversation over the telephone, and he held the phone there pretending that he was calling Joe and Fred Rotter to the office. In the meantime we were talking. And he says, "Well, if we catch any of our boys on Company time signing any A. F. of L. men we will lay them off for two or three days.

Q. Who did he say that to?

A. He was talking to John Despol over the phone.

Q. Anything further said?

A. And Collins made a statement to Levascos and myself, "There is a good chance to get two or three days vacation."

Q. Did he explain that?

A. He did say that.

(Testimony of Charles Spallino.)

Q. Did he explain what he meant by that?

A. Yes, well, if Joe Spallino or someone would catch us in action, then we could take two or three days vacation with pay.

Q. And did Mr. Collins have anything further to say to the person on the telephone that you now recall?

A. Well, it was more of a little joke here and there, [317] and Johnny was taking up too much of his time, so he told Johnny to please get off the wire and go ahead and do something else, that he had business to attend to, and that was about all.

Q. Was or was not anything said by Mr. Collins to the person on the telephone as to whether or not Mr. Collins would take any action?

A. Towards the organizing during Company time?

Q. Did he say anything in that respect over the telephone? A. Yes, well——

Q. What did he say?

A. I already said that, didn't I?

Q. Didn't you understand the question, sir?

A. Will you repeat that?

Q. Was or was not anything said by Mr. Collins over the telephone with respect to whether or not Mr. Collins proposed to take any action?

Mr. Collins: Objected to as having been asked and answered.

Mr. Nicoson: I would like to finish the question, if you don't mind.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Have you laid a foundation? I don't think you have.

Mr. Nicoson: Sir?

Trial Examiner Kent: Refreshing the man's recollection [318] again.

Mr. Collins: I distinctly remember the witness saying that I told Mr. Despol that if we caught anybody organizing on Company time they would be given a two or three day layoff without pay, and these fellows could get a vacation with pay, or something like that.

Mr. Nicoson: That is right. I am trying to find out if anything else was said.

Q. (By Mr. Nicoson): Was anything else said that you now recall by Mr. Collins to the person on the telephone at that time and place

A. Not that I can recall.

Mr. Nicoson: May I have the answer?

(The answer was read.)

Q. (By Mr. Nicoson): Was or was not anything said by Mr. Collins to the person on the telephone at that time and place with respect to stopping such activity if it existed?

A. Oh, yes, he promised Johnny that he would see that that would not happen during Company time, that he didn't know anything like that was going on.

Q. Did or did not Mr. Collins tell you to continue or cease your efforts on behalf of the A. F. of L. at that time and place? A. No.

Mr. Collins: Just a moment. Now I move that

(Testimony of Charles Spallino.)

the entire [319] line of testimony of this witness be stricken upon the ground it does not tend to prove or disprove anything at issue. The witness has stated that I did not tell him to do anything by way of stopping organizing activities on behalf of the A. F. of L. Surely counsel does not intend to prove by this line of testimony that I would have the right to stop the A. F. of L. from organizing that plant, does he? If I had done that, instead of having the CIO as a moving party it would mean the A. F. of L. is the moving party here, claiming that I was interfering with their rights of organization of the factory.

Mr. Nicoson: I think the witness' testimony is all proper, quite relevant and material to the issues framed by the complaint.

Mr. Collins: May I have a ruling on that motion, Mr. Examiner?

Trial Examiner Kent: Yes. The record may remain.

Q. (By Mr. Nicoson): It has been stipulated here that an election took place among the employees on November 20, conducted by the National Labor Relations Board. Did you at or about that time have another conversation with Mr. Collins?

A. Yes.

Q. In relation to the election, when did that occur?

A. About two days before the election. [320]

Q. And where did that conversation take place?

A. In Collins' office.

(Testimony of Charles Spallino.)

Q. Who was present?

A. Johnny Levascos and myself.

Q. Was Mr. Collins there?

A. And Mr. Collins.

Q. Just the three of you? A. That is all.

Q. What was said at that time and place and who said it?

A. Well, Mr. Collins had a leaflet or whatever you call it——

Q. Well, what do you call it?

A. I call it a little speech, that I being the president of the Five and Over Club could get this here pamphlet and have Mr. O'Keefe go over it first to see if there was any mistakes or any corrections that had to be made and for me to——

Mr. Collins: Just a moment.

Mr. Nicoson: I think he ought to be permitted to finish his answer.

Mr. Collins: He has answered that. Now just a moment. I move this witness be instructed to answer what was said and what he said and what I said.

Trial Examiner Kent: I think you'd better start over, and be careful to state what was said by the various parties, for instance, what was said by you and what was said by Mr. [321] Collins and if somebody else was present at the conversation and said something.

Mr. Nicoson: Your Honor, I have to protest——

Trial Examiner Kent: To the best of your recollection.

(Testimony of Charles Spallino.)

Mr. Nicoson: I have to protest the interposing objections in the middle of an answer. Now, the question was all put, counsel has time enough to put his objection in, and the witness should be permitted to answer his question in full, and if it is improper a motion to strike will lie. That is the recognized practice, even in the police court.

Trial Examiner Kent: The witness is inclined to testify as to his conclusions.

Mr. Nicoson: Very well, if he testifies improperly a motion to strike will lie. That is common practice.

Trial Examiner Kent: No, I think the proper way is for the witness——

Mr. Nicoson: Then there has been time after time that this poor witness has been interrupted by counsel all through his testimony right in the middle of an answer, regardless of what he is saying or for what purpose. I protest very vigorously against such treatment and I protest to you as presiding officer that that is improper.

Trial Examiner Kent: Read the answer the witness has given so far.

Mr. Collins: I submit that Mr. Nicoson's statement is [322] not a true statement of the law of evidence, even in a police court, and most certainly not before this tribunal which is a branch of the United States. I think when a witness is testifying improperly you have to interrupt him whenever you have a chance to interrupt him.

Mr. Nicoson: I submit, your Honor, that counsel

(Testimony of Charles Spallino.)

for the other side has no right to interrupt the witness in the middle of an answer under any circumstances.

Trial Examiner Kent: I think he has if the witness is testifying as to a conclusion.

Mr. Nicoson: I disagree with you.

Trial Examiner Kent: Read the answer.

Mr. Collins: If he is stating that is what was said, then I will stipulate that the matter should be left in there, but it is the rankest sort of conclusions by this witness. Nothing could be a more perfect example of what was wrong with the witness doing on the stand.

(The answer was read.)

Trial Examiner Kent: Was that what you actually said?

The Witness: That is right.

Trial Examiner Kent: Very well. You may finish your answer.

The Witness: What was the last I had there?

(The answer was read.)

The Witness: In the meantime Collins—well, Johnny [323] Levascos was already with me, and with Mr. O'Keefe, that is we came down before the following morning—I am getting a little ahead of myself.

Q. (By Mr. Nicoson): You just stay right here at this time.

A. I am going a little ahead of myself. But Mr. Collins suggested that it would be a good idea being that the CIO——

(Testimony of Charles Spallino.)

Mr. Collins: Just a moment. I want this witness to testify what I said and what he said.

The Witness: This is what I said and you said.

Trial Examiner Kent: I think the word you used, word suggested, was a little misleading. If you are going to actually say what he said, all right.

The Witness: He is right in front of me, your Honor.

Trial Examiner Kent: I know, but nevertheless say what he said, not what he meant.

A. Well, Mr. Collins stated that being that the CIO has got a right to pass literature to their members at the employees' entrance, then the Five and Over Club would have the same privileges and it is up to the president of that Five and Over Club to have such literature pertaining against the CIO, that the CIO is not—well, it is a radical organization, that we could not profit by the CIO, and such words as that was in this literature, and he suggested, that is Collins, Cecil Collins suggested [324] that I show, that is Levascos and myself, to have Mr. O'Keefe, who is president of the O'Keefe and Merritt Company, to go over this little leaflet and to have it printed on the outside, outside of the plant. Usually the Five and Over Club used the lithograph in the plant in all literature and notices.

Mr. Collins: Just a moment. Did I tell you that, that usually the Five and Over Club used the mimeograph? This witness is getting out of the conversation.

(Testimony of Charles Spallino.)

The Witness: I am going way ahead, yes, I am telling the story. I am sorry. I am sorry I didn't know when to stop. I am telling the whole story.

Trial Examiner Kent: Well, I think that sort of amplification is proper anyway.

The Witness: So I made arrangements with Mr. Simmons.

Mr. Collins: Just a moment. I object to that and I move the answer be stricken as a conclusion of the witness, I made arrangements.

Mr. Nicoson: I agree it should go out.

Trial Examiner Kent: Try to avoid that. I know it is hard. Say actually what you said to Mr. Simmons, not that you made arrangements.

The Witness: We will get through with Collins first.

Q. (By Mr. Nicoson): Was Mr. Simmons there at that time. A. No. [325]

Q. All right. What else was there talk about in Mr. Collins' office?

A. Well, we were, that is all, to get that leaflet out and have it out just in—that is election morning, to have it out so that everybody would see it, would get it just before election, that we would have that leaflet out.

Q. Had you prior to that time had anything to do with this leaflet or speech or whatever it was?

A. I didn't have anything to do with it at all.

Q. Had you seen it before? A. No.

Q. Had you even heard about it before?

A. No.

(Testimony of Charles Spallino.)

Q. After this meeting with Mr. Collins, what did you do with respect to this leaflet, speech, or whatever you choose to call it, if anything?

A. Well, we came downstairs to the purchase agent's office, Mr. Simmons. I don't know his first name.

Q. Did you see Mr. Simmons? A. Yes.

Q. And did you talk to him? A. I did.

Q. Was there anyone else present besides Mr. Simmons and yourself?

A. Well, Johnny Levascos.

Q. Anyone else? A. No.

Q. What did you say, what did Mr. Simmons say, and what did Mr. Levascos say, if anything?

A. I asked Mr. Simmons if it would be possible to get a printer there sometime tomorrow, I had this leaflet that I had to show to Mr. O'Keefe and as soon as Mr. O'Keefe O.K.'d it that we would like to have it printed and printed fast so that we would have it before the election.

Q. Did Mr. Simmons make any reply to that?

A. Well, he said that he would contact the man, and that was all.

Q. Did you thereafter talk to Mr. Daniel P. O'Keefe?

A. The following morning Levascos and myself walked into Mr. O'Keefe's office.

Q. Was anyone else present?

A. Not at that moment.

Q. Did anyone else come in during the course of the conversation?

(Testimony of Charles Spallino.)

A. Mr. Cecil Collins came in.

Q. What was said at that time and place and who said it?

A. Well, we had this, that is I had it because I had it, I handed it to Mr. O'Keefe.

Q. You handed what? [327]

A. This thing that I called a speech or literature, and I asked him to go over it and see what he thought of it.

Q. Is that the same document you got from Mr. Collins? A. The same one.

Q. What did Mr. O'Keefe say if anything in reply to that?

A. He laid it on his desk and he started going over it and he scratched a few things there with his pencil, a few words there scratched out, finally it got so bad there that he finally called his secretary, I think he called her Mary.

Q. What did he do with his secretary, if anything?

A. Well, he started dictating to her the words that he wanted changed, and he got so far, then he says, "Well, it will sound too much like I am making the speech, so we'd better drop it," he says, "I will make a speech instead, I will talk to the boys myself." [328]

Q. Did you or Mr. Levaseos make any reply to that?

A. Well, I told him that it was a good idea, that the boys always had listened to his speeches, that

(Testimony of Charles Spallino.)

they really had a lot of faith in him, and that it would be better for him to talk than to have me put this literature out.

Q. Did anything else transpire at that time or was said at that time? A. No, that was all.

Mr. Collins: All the witness' testimony I move be stricken upon the ground that it does not tend to prove or disprove anything at issue. Whatever was attempted to be done, Mr. O'Keefe stopped it. If there was some unfair labor activity started by Collins and Levascos and Spallino, it was stopped by the respondent company. I move that it be stricken.

Mr. Nicoson: I would not agree to that.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): Thereafter did Mr. O'Keefe make a speech or talk? A. He did.

Q. When did that occur, if you know?

A. That took place before noon.

Mr. Collins: I am willing to stipulate that Mr. O'Keefe made a speech to all the employees, and I will furnish the Board with a copy of the speech, if you care to accept that [329] stipulation.

Mr. Nicoson: When did he make it?

Mr. Collins: When, I don't know the exact date. I believe he made two speeches altogether. I will bring you copies of those if you want them. If you will accept the stipulation he made the speeches, I will bring them in.

Mr. Nicoson: I did not know that the matters

(Testimony of Charles Spallino.)

had been reduced to writing, and I will be glad to see them.

Mr. Collins: Well, the offer of stipulation is that I will bring in the two speeches verbatim.

Mr. Nicoson: I am not trying to be an obstructionist here, but I do not exactly want to bind myself to the contents of those speeches, but I do appreciate your courtesy in submitting that.

Mr. Collins: I will give you a general idea of those, if you would care to have me make the statement.

Mr. Nicoson: I would rather the statements came in and let me have an opportunity to look at them, and if it is what I think it is, then I can probably stipulate with you.

Mr. Collins: Very well, I will see if we can bring them in.

Mr. Nicoson: You are not able at the present time to stipulate as to the dates of those?

Mr. Collins: Well, I think one of them was the day before the election, and one of them was about a week, in other [330] words, one of them would be somewhere close to——

Mr. Nicoson, one of the speeches would have been, if the election was held on November 20th, which as I recall the date was, one of the speeches was made on the 19th of November or the 18th or 19th, something like that.

Mr. Nicoson: The 18th was on Sunday.

Mr. Collins: It must have been on the 19th, and the other speech was about a week after the elec-

(Testimony of Charles Spallino.)

tion. I have a copy of them. The tenor of both was that he didn't like either union, but he thought the lesser of the two evils was the A. F. of L.

Mr. Nicoson: Well, just as a matter of record here, I think that he made three talks.

Mr. Collins: He made one speech—may we go off the record a few minutes here?

Mr. Nicoson: All right.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: I am willing to stipulate that Mr. O'Keefe made three speeches, one of them more in the nature of an announcement; one of them about approximately the 19th of November, and another one would be about a week after that date, and then the last one was made just a few days before the Pioneer Electric Company took over the leasehold interest in the plant, [331] which would have been about the 1st of February, around the 1st of February.

Mr. Nicoson: As I stated off the record to counsel, those dates and occurrences are according to my information. I appreciate his offer to bring in the speeches. I do not want at this time to bind myself as to the contents of those written documents, of course, until I have had an opportunity to look at them, but I do appreciate your offer and will be glad to receive them.

Mr. Collins: It will save you bringing a lot of

(Testimony of Charles Spallino.)

people to testify as to the contents of them, because I had men and I know you had. Everything he said was reduced to writing and he read off the written statement, and we kept the copies.

Mr. Nicoson: Would you further stipulate that at each of these meetings at which Mr. O'Keefe read from these records that there were approximately 200 to 250 employees present?

Mr. Collins: Yes, I will stipulate that there were at least that many, probably more. There are approximately 500 employees now. At the time of the election there were approximately 300 eligible to vote and at the present time there are over 500 eligible to vote.

Mr. Nicoson: That is my recollection. I think that the official record, the Board's records at that time will show that there were approximately 312 eligible to vote. [332]

Mr. Collins: And at the same time the Pioneer Electric Company had approximately 180 people who would have been eligible to vote if they had been called in for the election.

Trial Examiner Kent: Is that in addition to that 300?

Mr. Collins: Yes. Do you accept that statement, Mr. Nicoson? I don't mean you are not going to get the speeches in verbatim. I will submit them to you.

Mr. Nicoson: I just want to make sure that the record correctly states what I think I heard you say. I don't want to take an unfair advantage of

(Testimony of Charles Spallino.)

you. Talking about 180, I think you used a term which implied that they were also present at the speech.

Mr. Collins: No, the 180 were not present.

Mr. Nicoson: I don't think you meant that, but I think your language is susceptible to that interpretation.

Mr. Collins: The 180 were from the Pioneer. That was different.

Mr. Nicoson: They were not present at the speech, as far as you know?

Mr. Collins: They were not present at the speech. Is that stipulation accepted?

Mr. Nicoson: On this basis, that I am calling your attention to the fact that I reserve the right to look at the printed copies before I am bound by them.

Mr. Collins: Very well. [333]

Mr. Nicoson: As to dates and so forth, I accept that stipulation.

Mr. Tyre: You mean they are on O'Keefe & Merritt's payroll?

Mr. Nicoson: Yes.

Mr. Tyre: You are not accepting that stipulation as to the number of Pioneer?

Mr. Nicoson: The approximate number of persons that attended the speechmaking at these times. There may be more or may be less.

Q. (By Mr. Nicoson): Now, prior to the election, did the Five and Over Club have a meeting?

A. Yes.

(Testimony of Charles Spallino.)

Q. How did that meeting come about?

A. Well, right after Mr. O'Keefe's speech I was in the back end——

Q. Which speech?

A. This is the first speech, that we was just talking about, the first speech.

Q. The first speech, that is the one we stipulated occurred on November 19th? A. Yes.

Q. Go ahead. What happened?

A. I was asked to call a special meeting.

Q. By whom? [334]

A. Now, that could come from Fred Rotter, and it was suggested to Johnnie Levascos and I that we call a special meeting.

Mr. Collins: Just a moment. I move to strike out "It could come from Fred Rotter," as an expression by the witness.

Trial Examiner Kent: The witness may state what was said.

Mr. Collins: May we have that remark stricken, Mr. Examiner?

Trial Examiner Kent: Well, yes, that first remark may be stricken.

The Witness: Johnnie Levascos suggested that we should have a Five and Over meeting before the election, to have this meeting at 4:15. So at that time it must have been about 3:00 o'clock or somewhere around 3:00 o'clock, so we went into Collins' office and Collins, Cecil Collins, dictated a speech to me, and I told him that I as president

(Testimony of Charles Spallino.)

of the Five and Over Club was not going to make a speech to my members that voted me into office, that I was not going to take sides and it was not right for me to tell them which way to vote, that I would open the meeting and I would tell them what my personal feelings were, and then they could go ahead and vote whatever they wanted to. Johnnie Levascos volunteered to make the speech himself. So they went over the speech—— [335]

Q. (By Mr. Nicoson): What do you mean by “they”?

A. Levascos and Cecil Collins.

Q. Go ahead.

A. So, after this was all said, the time was near, after—well, about 3:30, we left Collins’ office and came downstairs and Levascos says, “Say, Charlie, I feel like we ought to have a shot of liquor, I think I will have a little more oomph.” So we got Johnnie’s car and we went two blocks, I rode about two blocks and we went to this cafe and we had a shot of whiskey apiece, and then we came back to the plant.

Mr. Collins: I move to strike the witness’ last testimony on the ground that it does not tend to prove or disprove anything at issue in this case, that part about going to a cocktail bar and buying a drink.

The Witness: Well, that was in the conversation.

Trial Examiner Kent: I can’t see the purpose of that in the record. Still, it may remain.

Mr. Collins: Well, it might be misconstrued as bribery. I think we better have it stricken.

(Testimony of Charles Spallino.)

The Witness: It was just to quiet nerves.

Q. (By Mr. Nicoson): Well, did you have a meeting of the Five and Over Club?

A. We did, at 4:00 o'clock, Johnnie——

Q. Just a minute. Do you know of your own knowledge whether or not any notice was given to the employees of the [336] meeting?

A. Yes.

Q. Do you know how the notice was given?

A. Through the foremen of each department.

Q. Who gave the notice, if you know?

A. Well, I gave some of the notices to different foremen, and Johnnie did to some foremen.

Q. About how many foremen did you give the notice to?

A. Well, the ones that were nearest to me. I could say the drill press foreman and——

Q. Who is that?

A. That is Frank Vacquero.

Q. Anyone else? A. And the press line.

Q. Is that a foreman?

A. Now, I can't recall the name of the foreman.

Mr. Collins: Mr. Nicoson, I am willing to stipulate that this man handed out notices of the meetings of the Five and Over Club to all of the foremen, or should have handed it to all of them. I am willing further to stipulate that that is the customary and usual method of calling meetings of the Five and Over Club.

Mr. Nicoson: And that in response to his request the foremen did so notify the employees that there

(Testimony of Charles Spallino.)

would be a Five and Over Club meeting that afternoon at 4:15? [337]

Mr. Collins: I will stipulate to that.

Mr. Nicoson: That you, Mr. Collins.

Q. (By Mr. Nicoson): You attended the meeting, was there a meeting at 4:15?

A. There was.

Q. And did you attend it? A. Yes, sir.

Q. And tell us what transpired at that meeting.

A. Well, I opened the meeting and I told the members that I had been working with the company for 19 years, and we had been fighting unions for the last—well, as long as I have worked there we never had a union, we always fought the unions, that now we had to have a union and it is up to us to decide what union we want, and it is up to you to use your judgment on which you think is the right union for you, so I says at this time Johnny Levascos is going to make a speech to you, and I presented the mike to him, to Johnny Levascos.

Q. Did Mr. Levascos make any remarks?

A. Well, the remark he made, that he was a union man, that is, Johnny Levascos made the remark that he belonged to the A. F. of L. several years ago, that he thought that the A. F. of L. was the best of the two unions, that the C.I.O. was a radical organization and that we—well, he said something about Collins telling him, he was just coming to Collins' office and Collins knows that Collins represents certain C.I.O. [338] unions, that he ought to

(Testimony of Charles Spallino.)

know that the C.I.O. couldn't get you anything, and I really don't remember the whole speech. I know just certain words were said.

Q. Where was this meeting held?

A. At the Five and Over Clubroom in the plant, that is the north or east end of the building.

Q. And about how many persons were present, if any?

A. Well, I would say there was better than 200 up there.

Q. What time did the meeting begin and what time did it close?

A. Well, we started the meeting at about 4:15 and had about two or three minutes from 4:30, because we had the time to get downstairs and the ballot boxes were already in order and the election was about to begin.

Q. Is there a regular quitting time for the employees at the plant?

A. There is.

Q. What is that time?

A. Well, there is a shift that gets off at 3:30, around that time, and a shift that gets off at 4:30 is regular time.

Q. Do you know what the shift that gets off at 3:30 is comprised of?

A. I don't understand that word.

Q. All right, strike it. I am not sure I understand it, either. You testified that there was a shift getting off at [339] 3:30. Do you know what employees or group of employees get off at 3:30?

A. The service department.

(Testimony of Charles Spallino.)

Q. The service department. Where is the service department located?

A. That is on the same end that the Five and Over Club is. That is—I don't know. I haven't got my directions, whether that is east or—it is on the corner of the building in front.

Q. Do you know at that time, of your own knowledge, approximately how many persons were in the service department?

A. Well, I would say roughly about 15.

Q. About 15. Was any deduction made in your pay for attending this meeting at the Five and Over Club? A. No.

Q. I believe you testified you were at that time president of the Five and Over Club? A. Yes.

Q. Does the Five and Over Club hold meetings from time to time?

A. Yes, meetings were held before that. We have our regular meetings on the second Thursday of each month.

Q. What are the hours that you hold the meeting, usually?

A. It is at 8:00 o'clock at night, unless we call it, like sometimes call it in the morning. [340]

Q. There has been intimated here that there was an election of the N.L.R.B. on November 20. Did you take any part in that election?

A. Yes, I was forcefully—

Q. Never mind the forcefully. What did you do?

A. As an observer for the A. F. of L.

Q. By whom were you designated for that?

(Testimony of Charles Spallino.)

A. Mr. Roberts of the Stove Mounters.

Q. Did you at the election have anything further to do with the organization of others for the A. F. of L.?

A. No.

Q. Do you in connection with that know whether or not Mr. Levascos had any further activity in that respect?

A. Yes.

Q. Do you know what they were?

A. Well, he formed a new committee to do all the organizing.

Q. I beg your pardon?

A. He formed a new committee to do the organizing.

Q. Do you know any of the persons on that committee?

A. Well, there is Percy Castro is one, Red Cunningham, Joe Arlotti, and Joe Sanchez.

Q. Anyone else that you remember?

A. Not that I remember.

Q. What about John Levascos?

A. Yes, Johnny Levascos was on it. [341]

Mr. Collins: At this time I wish to move to strike the testimony on the ground it does not tend to prove or disprove anythings in issue in this case. There is no showing any of these people were agents of the O'Keefe and Merritt Company. I also move to strike on the ground that the statement of the witness that Johnny Levascos formed a committee is the rankest sort of a conclusion, and there is no foundation laid for such testimony. [342]

(Testimony of Charles Spallino.)

Trial Examiner Kent: The record may remain. I don't know that I would consider that a conclusion, but it does represent the danger of the argument we had before, letting a witness go ahead and testify as to conclusions and not objecting until he is through. It isn't time-saving.

Mr. Collins: I got myself in a controversy a moment ago with counsel because I didn't let the man finish before I moved to strike.

Mr. Nicoson: I don't think he has finished yet.

Trial Examiner Kent: It is a little bit ambiguous. I will let counsel inquire further and ask one question as to how he knows Levascos appointed the committee. Technically, I suppose, the objection is right.

Q. (By Mr. Nicoson): Do you understand the Trial Examiner's suggested question?

Trial Examiner Kent: How do you know Levascos appointed the committee?

The Witness: It is the way Johnny gets around there, the same way he works with me. I know he had a conference with these fellows, because I was in a position to see his actions as president of the Five and Over Club; I had chances to go into the office, personnel office, and see him make transactions with his—these membership applications and check in with Fred and with the personnel department there.

Mr. Collins: Did you hear him organizing the committee [343] or see him organizing it? Or did he tell you he organized it?

(Testimony of Charles Spallino.)

The Witness: Sure, he told me.

Mr. Collins: He told you he organized it?

The Witness: He even told me he was money out in collecting his dues.

Mr. Collins: Just a moment, Mr. Spallino.

Trial Examiner Kent: Did he tell you he appointed the committee? That was the question I think Mr. Collins asked.

Mr. Collins: Did Mr. Levascos tell you?

The Witness: No, he didn't tell me he appointed a committee.

Mr. Collins: O.K. I now move to strike this entire line of testimony upon the ground that this man is testifying to his own conclusions, suspicions, surmise and conjecture.

Trial Examiner Kent: Not the entire line.

Mr. Collins: That portion of it pertaining to he formed the committee. I move that be stricken and all the testimony pertaining to it, and given thereafter, be stricken; nothing but guesswork. That is the very conclusion of this court, to determine who did these things.

Trial Examiner Kent: I will sustain the motion.

Mr. Tyre: Your Honor, I think before you rule on it, I think it should be called to your attention Mr. Levascos throughout Mr. Spallino's testimony has been shown to be an [344] agent working for the O'Keefe and Merritt Company, for the very purpose of organizing the A.F.L. and to circulate against the C.I.O. For that reason any statements made by the agent Levascos are binding upon

(Testimony of Charles Spallino.)

O'Keefe and Merritt, even though they be a conclusion of the witness.

Trial Examiner Kent: The only part of the testimony, Mr. Tyre, that is stricken in view of the motion, is that last part that the witness gave that Levascos appointed the committee. It is obvious he doesn't know. That is purely a conclusion. It is obvious from the testimony.

Mr. Tyre: I thought he said Levascos told him he formed the committee.

Trial Examiner Kent: No, he said he didn't, if I understood him right.

The Witness: No.

Mr. Tyre: I withdraw my statement.

Trial Examiner Kent: That is the only part of the motion that is granted. The rest of the testimony is in.

Q. (By Mr. Nicoson): You mentioned a Mr. Cunningham. Who is he?

A. Well, I don't know what capacity he has now. At the time he was a straw boss or leadman in the generator department.

Q. You mentioned a Percy Castro. Who is he?

A. He is in about the same capacity in the enamel plant, [345] straw boss or leadman.

Q. At any time after the election, did you see either Mr. Cunningham or Mr. Castro do anything in connection with the A.F.L. application cards?

Mr. Collins: Just a moment. Objected to on the ground it doesn't tend to prove or disprove

(Testimony of Charles Spallino.)

anything at issue in this case. There is no showing Mr. Castro or Mr. Cunningham are officials of O'Keefe and Merritt Company, nor is it shown they were authorized in connection with the card, any activities they might have had in connection with the union. There is no showing it is binding on either of these respondents in this case.

Trial Examiner Kent: Read the question, please.

(The question was read.)

Trial Examiner Kent: The objection is overruled. He may answer.

Mr. Garrett: I want to object to that question as being incompetent, irrelevant and immaterial. What bearing would it have on any of the issues in this case if they had?

Trial Examiner Kent: The answer will be yes or no. Then I suppose another question will follow. It is a foundation question, as I see it. You can answer.

The Witness: The question again.

Mr. Nicoson: Read the question.

The Witness: Did I see the two——[346]

Mr. Nicoson: Read the question to the witness.

(The question was read.)

The Witness: Yes.

Q. (By Mr. Nicoson): What did you see?

Mr. Collins: Objected to on the grounds previously stated.

Mr. Garrett: I am going to object to that.

Trial Examiner Kent: It may be or may not be.

(Testimony of Charles Spallino.)

Mr. Nicoson: I would like to withdraw that and ask him another question.

Q. (By Mr. Nicoson): The things you saw, where did they occur? A. In the plant.

Q. Was it during or off working hours?

A. During working hours.

Q. What did you see?

Mr. Collins: Objected to on the same grounds heretofore stated.

Mr. Garrett: Objected to on the ground it is incompetent, irrelevant and immaterial. It seems to me after, as before the election, the A.F.L. organizations had a perfect right to get signatures on application cards, either through Mr. Castro or through Mr. Cunningham, or anyone else.

Mr. Nicoson: On company time and property?

Mr. Garrett: And on company time. If they could do it, why not? [347]

The Witness: How come the C.I.O. couldn't do it?

Trial Examiner Kent: Never mind.

Mr. Nicoson: Wait a minute.

Mr. Garrett: Organizations get theirs signed on company time. I don't think there is anyone here so naive that they think people run off the premises or wait until 5:00 o'clock to sign an application card.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: As far as I am concerned, it seemed they used brickbats and clubs out there in the fac-

(Testimony of Charles Spallino.)

tory getting members in both unions. I can't see any difference.

Mr. Schullman: On behalf of my clients, I move the remarks of counsel against any organizational methods, which are not salubrious, do not apply.

Trial Examiner Kent: I ruled the answer might be taken. I think the answer was in to the last question.

Mr. Nicoson: Will you read back the record?

(The question was read.)

The Witness: What did I see?

Mr. Collins: Has there been a ruling?

Trial Examiner Kent: Yes.

Mr. Nicoson: Yes.

Trial Examiner Kent: I ruled he might answer.

The Witness: I have seen Castro come into the back end [348] of my department, the drill press department. There was a new man employed there and he came there during working hours to sign him up. The boy told him he was just a veteran, he was on leave for 30 or 60 days. I don't recall whether it was 30 or 60 days. And he tried to sign this boy up. The boy refused to be signed. [349]

Q. (By Mr. Nicoson): Was there anything else you observed in that connection?

Mr. Garrett: I move to strike the whole testimony on the ground it is clearly shown it has no relevancy, by the answer.

Trial Examiner Kent: The testimony is admissible. I think your objection may probably go to

(Testimony of Charles Spallino.)

the weight, I suppose; unless it was in a supervisor's presence.

Q. (By Mr. Nicoson): Did you observe anything further with respect to these two gentlemen?

A. To Red Cunningham I did observe, I seen with my own eyes applications with Johnny Levascos in a little room adjoining Fred Rotter's office, that is, the personnel office, changing over these applications, cash and a list of names, which later was brought into Andy Sherman for a checkup.

Q. Was this during working hours——

A. Working hours.

Q. ——or off hours? A. Yes.

Q. Yes what? A. During working hours.

Q. Did you observe anything further with respect to these two gentlemen in that regard?

A. I guess that is about all.

Trial Examiner Kent: Where was Mr. Rotter?

The Witness: I don't recall him in his office. His office is opposite this little place.

Mr. Collins: I wish to move to strike that last testimony on the ground there is no proper foundation shown. The mere statement "during working hours" does not in and of itself show these people were being paid, Mr. Levascos, for example—this last testimony of the witness, there is no showing at this time this witness knows whether Mr. Levascos is being paid by O'Keefe and Merritt, the A.F.L. or the C.I.O. or what he was doing around there.

Mr. Nicoson: I think that is immaterial, your Honor, if he was doing it during working hours.

(Testimony of Charles Spallino.)

He is supposed to be working during working hours, not on union business.

Trial Examiner Kent: It has materiality. There is a question of weight to be considered.

Mr. Collins: I wish to add the additional reason there is no reason that this witness knows it was during the working hours of Mr. Levascos. Mr. Levascos is an expeditor. He works sometimes nights, days, all the times; probably not at all.

Trial Examiner Kent: The record may remain. As I said, the question is to the weight of the testimony.

Mr. Nicoson: The question of the weight is for the jury, not for objections.

Trial Examiner Kent: That is true. [351]

Q. (By Mr. Nicoson): After the election, Mr. Spallino, did you have an occasion to talk to Mr. Daniel P. O'Keefe?

A. I did. The week following.

Q. Beg pardon? A. The week following.

Q. Where did you talk to Mr. O'Keefe?

A. In his office.

Q. Who was present? A. Just him and I.

Q. What was said by Mr. O'Keefe and what was said by you?

A. Well, may I state the reason why I was there to see him?

Q. You can state what you said to Mr. O'Keefe and what Mr. O'Keefe said to you.

A. Well, I went to Mr. O'Keefe to tell him that the fellows—the members——

(Testimony of Charles Spallino.)

Mr. Garrett: One moment. This is obviously not a part of the conversation.

Trial Examiner Kent: What did you tell him?

Q. (By Mr. Nicoson): What did you tell him?

A. The members of the Five and Over had been telling me they had heard rumors since the election there was no more Five and Over Club; we lost the Five and Over Club; we lost all our benefits. And in fact, they were going to plug up a hole they had dug in the enamel plant for floor furnace or water heater, I don't recall which it was. And that he was going to close [352] that end up. He was telling me, he says, "Charlie, it doesn't make any difference, as far as the Five and Over Club is concerned. It will still exist. Your bonuses, as far as you are making money, you will always get your bonuses and any benefits you receive will still continue."

He says, "I was over at Phyllis' house"—that is his daughter—"and there was a fellow there, a personal friend of the family. He is a contractor." He told them that he was sorry that the O'Keefe and Merritt went C.I.O. because his building contracts were all A.F.L. That he couldn't do business with Mr. O'Keefe.

And further he went on, that he went to a golf course or met some other friend that was in the building trade—or building contractor. That they were disappointed because O'Keefe and Merritt went C.I.O., because they couldn't give them any business.

(Testimony of Charles Spallino.)

But he says that he had a speech planned that he was going to tell all the employees, so that was all there was to it.

Mr. Nicoson: Off the record.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record. [353]

Q. (By Mr. Nicoson): It has been stipulated here that the third talk Mr. O'Keefe gave and which Mr. Collins is going to bring in the transcript of, occurred on or about February 1st. Did you attend and hear that speech? A. The second speech.

Q. Third one. A. The third one? Yes.

Q. Did anyone there talk besides Mr. O'Keefe and Mr. Durant?

A. There was Mr. Roberts of the Stove Mounters.

Q. How did Mr. Roberts come to talk, do you know? A. How did he come to talk?

Q. Yes. A. He was introduced by Mr. Durant.

Q. What did Mr. Roberts have to say at that time?

A. Well, he urged the boys to fall in line as soon as possible, to back the A.F.L. He could get the contract and everything going as soon as possible, for everybody to co-operate with him and see they had their dues paid up and membership all up.

Q. Did Mr. Roberts say anything further at that time?

A. He said that the contracts were all cleared with the different stove organizations, and we would

(Testimony of Charles Spallino.)

have the same thing that the other stove organizations are enjoying.

Mr. Nicoson: Now, with the exception of reserving the right to recall this witness—there has been some testimony [354] in this record about Pioneer Electric Company.

Q. (By Mr. Nicoson): Do you know anything at all about the Pioneer Electric Company?

Mr. Garrett: Wait a minute.

Mr. Nicoson: He can answer that yes or no.

Mr. Garrett: I object to that question. I never heard of a question like that before in my life. It doesn't put anything to the witness.

Mr. Nicoson: Well, it is a preliminary question, testing his knowledge.

Trial Examiner Kent: He may answer yes or no.

Q. (By Mr. Nicoson): Do you know, of your own knowledge, where, during the year from August 15, 1942, up to and including August 14, 1945, the Pioneer Electric Company was located?

A. Yes.

Q. Where was it located?

A. It is on Los Palos Street.

Mr. Garrett: How do you spell that?

Mr. Nicoson: L-o-s P-a-l-o-s.

Mr. Collins: Before we get a lot of errors, isn't that in the O'Keefe and Merritt factory?

The Witness: It is in the O'Keefe and Merritt factory.

Q. (By Mr. Nicoson): Will you describe the

(Testimony of Charles Spallino.)

location of the Pioneer Electric Company in the O'Keefe and Merritt Company? [355]

A. The location is right on Los Palos Street near the Olympic Boulevard—it is within a half a block of Olympic Boulevard on Los Palos.

Q. At the expense of being accused of leading you, isn't that what is the northeast corner of the O'Keefe and Merritt Building?

A. That is right.

Q. State, if you know, whether or not there were any physical barrier between the portion occupied by Pioneer Electric and the portion occupied by O'Keefe and Merritt?

A. There was a wall.

Q. What sort of a wall?

A. There was a plank wall, I would say, about eight or nine feet——

Mr. Collins: Mr. Nicoson, I may be able to shorten this by a stipulation. I am willing to stipulate that the Pioneer Electric Company occupied approximately 12,000 square feet in the O'Keefe and Merritt factory on the Los Palos side; that all during the war they made generators and they had a wall dividing it, with two doors, one to come in and one to go out through the O'Keefe and Merritt factory, one existing on Los Palos Street.

After the war was concluded and they began to terminate the contracts, the Pioneer Electric had only some civilian generator business to continue. The walls were torn down. [356] The generators

(Testimony of Charles Spallino.)

were moved to the O'Keefe and Merritt proper, and this part was utilized for some other purpose of the O'Keefe and Merritt Company. The employees were being commingled with the O'Keefe and Merritt employees in the factory, and the office personnel was moved upstairs close to what has been identified as my office at the top of the building.

That the Pioneer Electric Company continues to have their offices upstairs near mine, and they now have a lease on the entire factory of the O'Keefe and Merritt Company, with the exception of shipping, servicing, plant construction and sales.

This is no part of the stipulation. I might add, Mr. Nicoson, so far as my case is concerned, I expect to produce the leases, articles of copartnership, the certificate of fictitious firm name and so on.

Mr. Nicoson: Will you further stipulate that shortly after V-J Day, the number of the employees of Pioneer Electric Company was considerably reduced?

Mr. Collins: Yes. So were the employees of O'Keefe and Merritt drastically reduced.

Mr. Nicoson: Can you state——

Mr. Collins: I can't state that; I don't know.

Mr. Nicoson: ——approximately how many are left at the Pioneer?

Mr. Collins: No, I don't know. [357]

Mr. Nicoson: Without binding myself as to proving the actual number of employees that are left, I can go with him on the stipulation up to the point where he speaks about the leasing. I can't join in

(Testimony of Charles Spallino.)

the stipulation, at least at this time, on that portion of it.

Mr. Collins: I am trying to save time with this witness. I expect to prove all these things.

Mr. Nicoson: I appreciate that. I am glad to be able to go along with you up to the leasing part.

Mr. Collins: I would be precluded, though, from introducing evidence——

Trial Examiner Kent: Testimony of some of the company officials probably would be more——

Mr. Nicoson: I understand Mr. Collins is going to bring the lease and the articles of copartnership, which I would like to have as part of the record, and I think——

Mr. Collins: I am going to make that part of my case, the original lease and articles of copartnership of 1942, and from time to time as new partners were added to the thing, each time a new certificate of business was filed on. I have the file with me right now, if it will expedite matters. I would rather do it the regular way.

Mr. Nicoson: Can't we stipulate up to the lease portion and let the rest go in by documentary evidence? Is that agreeable? [358]

Mr. Collins: Yes. I don't want my stipulation to preclude me from introducing the lease. There is a valid lease.

Mr. Nicoson: I don't want that, either. I don't want to preclude anything about the lease or articles of copartnership. If you don't put them in, I think I want to put them in. In any event, as you say,

(Testimony of Charles Spallino.)

the articles originally in August of 1942 and there after——

Mr. Collins: Maybe I had better frame my stipulation a little bit more accurately, if I can look at this file.

Trial Examiner Kent: It might be wise, anyway, to go off the record so you gentlemen may be able to arrange a stipulation.

Mr. Collins: I offer to stipulate that a copartnership, known as the Pioneer Electric Company, was formed on the 15th day of August, 1942;

That the certificate of business fictitious firm name was filed on October 16, 1942——

Mr. Nicoson: 15th.

Mr. Collins: October 16th it was filed.

Mr. Nicoson: The stamp shows 15th.

Mr. Collins: October 15th, then, 1942. That thereafter on the 1st day of January, 1944, certain new members were admitted to this partnership—wait a minute. I am getting a little ahead of myself. A lease was thereafter entered [359] into on the 16th day of November, 1942, between the Pioneer and O'Keefe and Merritt Company, leasing 11,740 square feet of floor space, now enclosed, sometimes known as 1221 Los Palos, at a monthly rental of \$500.00 per month and other pertinent provisions in the lease.

Mr. Nicoson: Will the lease be produced?

Mr. Collins: Yes. Thereafter, on the first day of January, 1944, the copartnership admitted into

(Testimony of Charles Spallino.)

its membership certain new partners. I don't have the date of the—in fact, I don't have the date of the filing of the fictitious firm name on this new addition.

Mr. Nicoson: January 28, 1944.

Mr. Collins: Thereafter, on January 28, 1944, the fictitious firm name of that was recorded. On the 15th day of November, 1945, certain new members were introduced into the copartnership and the fictitious firm name of that organization, of the amended copartnership was then filed on——

Mr. Nicoson: November 28th.

Mr. Collins: On November 28, 1945. No. On the 23rd day of November, 1945.

Mr. Tyre: That is when it was signed.

Mr. Collins: Very well. On the 28th day, then. That a lease, a new lease was thereupon entered into between the Pioneer Electric Company and the O'Keefe and Merritt [360] Company on the 2nd day of January, 1946, wherein that part of the O'Keefe and Merritt factory, generally speaking, excepting the offices, with the exception of that part of the offices reserved by the Pioneer for their own office, excepting the shipping department, the service department, any new construction was leased to the Pioneer Electric Company by the O'Keefe and Merritt Company at an annual rental of \$48,000.00. There are other pertinent portions of the lease, and I intend to introduce these in evidence later.

I am willing to stipulate that was the condition

(Testimony of Charles Spallino.)

as to the Pioneer Electric Company from then until now.

Mr. Nicoson: Well, is that in addition to what we have already stipulated about the physical setup?

Mr. Collins: Yes, in addition to the physical setup. The part that the Pioneer Electric Company had during the war has now been enlarged to include all the factory, instead of that portion, that 11,000 square feet, that was enclosed for their benefit. It now includes the entire factory; they have enlarged.

Mr. Nicoson: Have we two stipulations or do we only have one? [361]

Mr. Collins: I will stipulate to both or all of it. I don't know where we stand.

Mr. Nicoson: What I am interested in is this portion of the plant which we tried to stipulate to a while ago that was enclosed by a wall, that on or shortly after August 14, 1945, the wall was removed and the machinery used by the Pioneer Electric Company was moved out of that portion into the portion of the building occupied by the O'Keefe and Merritt Company; that the employees of Pioneer, such as remained, were commingled with the employees of O'Keefe and Merritt.

Mr. Collins: I don't know whether we are going to get any place with the stipulation or not. I don't know whether they were commingled. They were put over there against a wall to put the generators together.

(Testimony of Charles Spallino.)

Mr. Nicoson: I thought I was using your exact words.

Mr. Collins: Maybe we can't stipulate, Mr. Nicoson. I don't know. If the statements I have made, if you care to stipulate to these, that is it.

Mr. Schullman: Before we adjourn, do I understand——

Mr. Nicoson: Would you mind letting us clear this thing up? If we can reach a stipulation we will know what we are stipulating to. If we can't, let it go by the board. I would make this suggestion, Mr. Collins, and counsel:——

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record. [362]

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Schullman: Before we adjourn, just for a second, I won't be here tomorrow, as I indicated. If this witness rests at this time or renews his testimony, I will make a subsequent motion.

I would now like to make a motion in respect to the witness Charles Spallino. In behalf of my clients, Local 792, I want to make a motion to strike all of his testimony from the commencement of his testimony to the very end, insofar as the same is inadmissible, incompetent, irrelevant, and not binding on the Painters, Local 792;

That none of the people, persons concerning whom he testified and to whom he spoke represented my clients, Local 792, or were agents of my clients

(Testimony of Charles Spallino.)

or authorized to represent them. There is no testimony in the record whatsoever they could speak for or in behalf of Local 792, and that the matters are things to which he testified and did not affect or concern or involve anyone who belonged to or was authorized to speak for or representative of the Painters, Local 792.

I want two separate motions. That is, a motion referring to his testimony, in which I move to strike all his testimony insofar as it affects my clients.

The second motion I wish to make is I wish to strike from the record, and for the sake of certainty, Exhibits 3 to 6. [363] I believe the court indicated he reserved ruling. In the event that ruling is made in my absence conforming with the rulings made on Exhibits 7 and 8.

I want to strike from the record, for the reasons heretofore stated, both in the objections to the admission and in my objections to the testimony, Exhibits 3 to 6, inclusive, Board's Exhibits, for the reason that on their face, and the testimony given by this witness concerning them, they cannot legally be binding upon my clients, Painters Local 792, for the reasons heretofore stated.

In addition, I move to strike from the record Exhibits 7 and 8 heretofore ruled on as admitted for the same reasons. And for the additional reason that those exhibits also do not purport to be document emanating from anyone who is authorized to issue such documents. On their face they purport to be documents of other persons than Painters

(Testimony of Charles Spallino.)

Local 792, and that all of the testimony related by this witness concerning such documents related to persons other than representatives, officials, agents, or anybody with authority to speak for or in behalf of Painters Local 792. This witness certainly admittedly himself does not represent or has represented or has authority to speak for Painters, Local 792. I therefore respectfully renew both of these motions.

Trial Examiner Kent: The motions, of course, raise some highly technical points. I will reserve ruling on your motion [364] to strike.

Mr. Schullman: I am only making them, your Honor. I won't be here at all. My associate may be here, and out.

Mr. Collins: I want the record to show I make the same motion on behalf of respondent Pioneer Electric Company; we join in that motion.

Trial Examiner Kent: I will make the same ruling. I will reserve ruling on Mr. Collins' motion just made.

(Whereupon, at 5:05 o'clock p.m., March 14, 1946, the hearing was adjourned to 10:00 o'clock a.m., Friday, March 15, 1946.) [365]

Friday, March 15, 1946

10:00 o'Clock A.M.

Trial Examiner Kent: Mr. Reporter, at this time I am making a couple of corrections in the record. In view of the fact that the ruling is in response to a motion by Mr. Collins, I can't see that the other

counsel should be prejudiced. On page 132, the Trial Examiner's ruling, beginning on line 10, I would ask that it be corrected to read: "Now, assuming I ruled the two entities were not identical and thereby precluded the Board's counsel from putting in a complete case, then I might wind up with the kind of record that would cause the record to be reopened. I think we had better take a complete record."

Mr. Garrett: What page and line was that correction?

Trial Examiner Kent: That began on 132 and began on line 10.

On page 134, the Trial Examiner's ruling at the bottom of that page: "I think in order to get a complete record I have got to take all the relevant testimony. Assuming I narrowed the presentation down to whether or not the Pioneer, the partnership, and the corporation, are tied up so that the hearing may be shortened and ruled that neither of the employer respondents may be considered to be an alter ego of the other, it might require a double hearing, for the Board might very well reopen the hearing and order additional evidence taken on the other phases of the case it deemed material." There is no substantial change. [370]

I may say, gentlemen, that I opened the hearing at 10:00 o'clock, and at 10:00 o'clock only Mr. Nicoson, Board's counsel, was here. In view of the fact we have agreed to work on somewhat shorter hours, I think we ought to be prompt, and I will

request all counsel to endeavor to be, except in a case of real emergency. I might also interject Mr. Collins was only about five minutes late. Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record. You might proceed.

Mr. Nicoson: At this time, your Honor, I offer to stipulate with Mr. Collins as I understood him to propose yesterday that the facts and things—

Trial Examiner Kent: Pardon me. Off the record for the purpose of considering a possible stipulation.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: I now offer to stipulate as fact the remarks made by Mr. Collins in yesterday's hearing as shown by the transcript beginning on page 356 about the middle of the page, where the words "Mr. Collins" first appear; all the balance of that page, all the next page 357 down to where the words "Mr. Nicoson" first appear; beginning again on page 359, in the middle of the page where the words "Mr. Collins" appear for the third time, beginning with "I offer to stipulate," all of the rest of that page, including the exchange [371] between Mr. Collins and myself, and on page 360 down to the place where the word "Mr. Nicoson" first appears; then again beginning on page 360 where the word "Mr. Collins" first appears, all the rest of that page, and on 361 down to where the words "Mr. Nicoson" first appear in the middle of the page; beginning

again where the words "Mr. Collins" appear the first and only time on page 361, down to where the word "Mr. Nicoson" next appears at the bottom of the page.

I offer that as a stipulation or, rather, I accept the stipulation of Mr. Collins as he made it yesterday.

Mr. Collins: The acceptance of the stipulation was not timely, and in the interim I have discovered certain matters that would change my offer of stipulation. I will now offer proof as to the exact nature and extent of the operation of the Pioneer factory. I can't accept the stipulation.

Mr. Nicoson: That is all the offer I have.

Mr. Collins: However, I will say, Mr. Nicoson, I intend to put all these matters you offer to stipulate to in detail, including the various matters, as part of the respondent's case.

Mr. Nicoson: I just wanted the record to show that I was willing to stipulate to that. The witness when we recessed yesterday was named Charles Spallino on the stand. I have no further questions. You may cross-examine. Will you please take the stand, Mr. Spallino? [372]

Mr. Tyre: What is the order that the Examiner will want in the examination of witnesses? I will have questions, I take it, of most of the witnesses. Does the Examiner want me to follow Mr. Nicoson or will you prefer to have the other counsel examine first?

Mr. Collins: I wish to object to Mr. Tyre examining the witness on cross-examination, upon the

ground that he does not represent a party to this proceeding.

Trial Examiner Kent: As I indicated yesterday, I think Mr. Tyre should restrict himself to new matter not drawn out by Mr. Nicoson, but he can, I think he is entitled to examine.

Mr. Garrett: As I stated on the record, it seems to me that the stipulation about which there has now been some conversation vitally affecting the interests of both the A. F. of L. and the C.I.O. unions involved. It is my understanding that there has been no stipulation agreed upon and accepted by the Board, is that the fact?

Trial Examiner Kent: I think the record so shows. Mr. Collins said that on checking it he found some inconsistency and would prefer to call a witness and put the facts in that way. So the stipulation is out.

Mr. Collins: What is the order of cross-examination?

Trial Examiner Kent: I think Mr. Tyre may proceed, then you, Mr. Collins, then the other three gentlemen, Mr. Garrett, Mr. Smith for Mr. Schullman, and Mr. Reed. [373]

Mr. Collins: Before Mr. Tyre proceeds, I would like to interpose another objection to having Mr. Tyre examine this witness on so-called cross-examination. Under the rules of procedure in this state, if the Board intends to comply with the rules of evidence, a man is not permitted to lead and suggest to the witness. We are going to have a genuine in-

consistency, by which Mr. Tyre, who is obviously representing an adverse party in this case, and this man is his witness, he is taking his own witness on cross-examination, and under the rules of evidence he will be permitted to lead and suggest, which I suggest is unfair tactics on the part of the opposition here.

Mr. Smith: It should be direct rather than cross.

Mr. Garrett: I think you have a good point here, sir. Mr. Tyre must confine himself to new matter, not cross-examination. What is indicated is that Mr. Tyre is to be accorded the privilege——

Trial Examiner Kent: To bring out new matter, that is right.

Mr. Garrett: Well, is he going to be restricted to cross-examination? If so, he can't bring out new matter.

Trial Examiner Kent: No, it would be primarily in the nature of direct.

Mr. Garrett: Therefore I take it that Mr. Tyre then is to be permitted to supplement the direct examination of the [374] Board in whatever respects he can make the Trial Examiner feel to be proper.

Mr. Collins: I submit that the proper proceeding here is for Mr. Tyre to indicate to Mr. Nicoson that there is a further question he wants of this witness, and that should be directed to the witness through the Board's attorney. This is a proceeding, not a persecution by the Board's witnesses.

Mr. Tyre: Are you anticipating something?

Mr. Garrett: Mr. Collins is apparently suggest-

ing that the proper procedure for Mr. Tyre to follow would be to retire.

Trial Examiner Kent: Well, let us proceed. I don't think we will have any difficulty.

Mr. Garrett: I want the record to clearly show the opposition, and I think I speak for all the A. F. of L. unions, to Mr. Tyre being permitted to examine, cross-examine or otherwise interrogate my witnesses in these proceedings.

Mr. Collins: I join in that objection and renew and reiterate my own.

Trial Examiner Kent: Well, I in substance ruled on that yesterday. He may proceed. I think properly it would be in the nature of direct. I think in fairness and to shorten the time it should be in reference to matters which were not covered by the Board's examination.

Mr. Tyre: That is difficult. [375]

Trial Examiner Kent: There may be testimony in the record on which the witness' testimony is rather ambiguous. I think you are at liberty to attempt to clear that up.

Mr. Tyre: That is what I had in mind.

Mr. Nicoson: So the record is not confused, as representative of the Board I want to clearly state that I do not feel bound by the examination of Mr. Tyre, and I do not concede that it is part of my examination.

Mr. Tyre: I take it you also have no objection to my examining?

Mr. Nicoson: I certainly do not, but I want it clearly shown that you are not operating for the

Board, you are operating for the United Steelworkers.

Mr. Tyre: The payroll will show that.

CHARLES SPALLINO,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Tyre:

Q. Mr. Spallino, there is some confusion in the record, I believe, as to the periods of time during which you held office in the Five and Over Club. Can you advise us at this time what positions you actually held or hold in the Five and Over Club, and when you held those positions, indicating the years as best you can recall them? [376]

A. Well, I was vice president for four years, that is before 1942.

Mr. Garrett: Was that the four years ending in 1942?

The Witness: Yes. Then I was—held office in 1941 and '42, I held office as president, and I retired for two years.

Q. (By Mr. Tyre): Now, you held office in 1941 and '42 as president? A. President.

Q. And for four years prior to that time you held office as vice president?

A. As vice president.

Q. So that would mean from 1936 to 1940 you held office as vice president, is that correct?

A. Yes.

(Testimony of Charles Spallino.)

Q. Now you held office you said in 1941 and 1942 as president. Did you hold any office after 1942?

A. In 1945 I was reelected president.

Q. Did you hold any office in 1943 and 1944?

A. I did not.

Q. In 1945, what month were you elected president? A. In January.

Q. I believe you testified that on a certain day Mr. Roberts gave you some application cards for membership in the Stove Mounters Union, and that thereafter you and Johnnie Levascos [377] obtained signatures of employees of O'Keefe and Merritt Company on those cards. Will you tell us during what parts of the day did you and Levascos obtain signatures to those cards?

A. During working hours.

Q. And during any of those working hours were you questioned by any foremen as to what you were doing?

Mr. Collins: Objected to as having been asked and answered.

Mr. Smith: The same objection is joined in by me.

Trial Examiner Kent: The answer may be taken. I can see what counsel for the other side have in mind, but I think they can clear it up better probably by cross-examination.

Mr. Tyre: Let me state, if the Examiner please, just so we will have no misunderstanding, I have gone over quite carefully my notes which I think

(Testimony of Charles Spallino.)

are rather carefully taken, and I am trying to sincerely not cover ground which has already been covered, unless there is some very definite ambiguity.

Trial Examiner Kent: No, I think a little amplification of those activities might be desirable for the record. I might suggest this: I would like somebody, I don't care who brings it out, to ask whether or not he left his own department and went into other departments, and I think the record might very well show if while he was doing that the [378] other foremen were also in the departments. Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Tyre: I think there is a pending question.

(Question read.)

A. Yes.

Q. (By Mr. Tyre): Will you state the names of the foremen whom you can recall who asked you what you were doing?

A. I recall one is Lawrence Matrenga, in the foundry.

Q. What did he say to you? [379]

A. Well, he said that—what I was selling, so I showed him the application blank and he walked away. That is his usual customary, he never says anything, he just walks away.

Q. Thereafter did you speak to any of the people in his department?

A. Yes, I went from moulder to moulder.

Q. About how long were you in his department

(Testimony of Charles Spallino.)

after you had shown him the application cards that you were signing up?

A. I would say a good half hour.

Q. Did Mr. Matrenga remain in the department during that time?

A. Well, he just walked around there, and I didn't pay any attention to him anymore.

Q. I think you testified the other day that you spent between two and three hours a day for a long period of time in your signing up these cards. In which departments of the plant did you spend those hours?

A. Any department I went to, any department I wanted to.

Q. Did you spend that time in any department other than your own? A. Yes.

Q. Which other departments?

A. Well, you can take the pressline, shear department, generator department, out in the yard, carpenter shed, shipping department, throughout the whole plant. [380]

Q. Were any of the foremen present in any of these departments at the time that you were in those departments signing up the people for the A. F. of L.?

A. Well, they couldn't miss seeing me.

Q. Did you see any of the foremen in those departments when you came in? A. Yes.

Q. When you saw Mr. Roberts for the first time, you saw him, I think you said, in the outer office, is that right?

(Testimony of Charles Spallino.)

A. In the outer office, yes, sir.

Q. How did you happen to be called?

Mr. Collins: Just a moment. I move that the answer be stricken upon the ground that it is assuming a fact, that the question does assume a fact not in evidence.

Trial Examiner Kent: Reframe your question.

Mr. Collins: As I recall the testimony, he saw Mr. Roberts, I believe, the first time outside of the factory in the street.

Mr. Tyre: I don't think that is the evidence.

Mr. Nicoson: That is not my recollection of the evidence either.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Tyre): Where is the first time you saw Mr. Roberts?

A. Well, in this—in the front office by the telephone [381] operator's entrance.

Q. How were you called out to the office?

A. By Johnnie Levascos.

Q. Where were you at the time that you saw Levascos? A. In my department.

Q. And he came over to you and asked you to come out to the front office? A. Yes.

Q. You testified the other day, Mr. Spallino, that you attended a meeting in Mr. Collins' office where there were a number of A. F. of L. representatives present. Will you tell us how you happened to be called into that meeting?

A. In the same manner, through Levascos, being that he has a phone there, he gets the phone call.

(Testimony of Charles Spallino.)

Q. What did he tell you when he came over to you?

A. Said we were wanted over to Collins' office, to go over to Collins' office.

Q. I believe you also testified that you met Mr. Roberts out at the guard station one time. How did you happen to be called to the guard station at that time? A. The guard.

Q. Pardon? A. By the guard.

Q. By the guard. Did the guard come in the plant or did he telephone, or do you know? [382]

A. Well, I am not sure whether I was in the lunch stand at that time that he called me, but I was within sight of him, he came up through the aisle and motioned to me and told me that there was a fellow waiting for me.

Q. At this meeting in Mr. Collins' office, where the other A. F. of L. representatives were present, did Mr. Collins participate in that meeting other than to sit in on it? A. Yes.

Mr. Garrett: One moment. This is going into something which has already been asked and answered.

Mr. Tyre: I don't think it has, your Honor.

Trial Examiner Kent: I am sorry I have not a clear recollection of the testimony. I imagine it will only be a question or two, won't it?

Mr. Tyre: That is right.

Trial Examiner Kent: Very well. You may take the answer.

Mr. Tyre: Will you read the question?

(Testimony of Charles Spallino.)

(The record was read.)

The Witness: Yes.

Q. (By Mr. Tyre): When you and Mr. Levascos went to the office of Mr. Collins, were any of those A. F. of L. representatives already there?

A. Yes, they were.

Q. Did any come in after you arrived? [383]

A. I don't recall.

Q. You don't recall whether any did?

A. Yes, I don't recall.

Q. Who introduced you to these representatives?

A. I am not sure whether it was Roberts or Collins, himself.

Mr. Garrett: Did you say Robinson?

The Witness: Sir?

Mr. Garrett: Did you say Robertson?

The Witness: Roberts of the Stove Mounters.

Q. (By Mr. Tyre): That was the same Mr. Roberts that you had seen on several occasions earlier, is that right?

A. That is right, yes, sir.

Q. I believe you testified that there was a representative from the Carpenters Union there, and you didn't recall his name, is that right?

A. That is right.

Q. Was this representative one of the employees of the shop? A. No.

Q. He was a man you had never seen before, is that right? A. That is right.

Q. Will you state to us, Mr. Spallino, what the

(Testimony of Charles Spallino.)

conversation was with reference to the different A. F. of L. unions taking part in organizing the various workers in the shop, and by saying the conversation, I want you to state what Mr. Collins [384] said and what each of the A. F. of L. representatives stated about that particular problem.

Mr. Garrett: Objection is made to the question on the ground that the witness has already testified on direct for the Board as to the entire contents of that conversation, and at the conclusion of his examination in that respect stated that he had on that examination narrated everything he could remember concerning the meeting.

Mr. Tyre: I think the question was asked him about jurisdiction, then there was some question there as to the meaning of that word, and I think the record is in confusion at that point.

Trial Examiner Kent: I am sorry I do not recollect this entire record. I will let the answer be taken.

Mr. Tyre: Will you read the question so the witness can answer it?

(The question was read.)

Mr. Garrett: Object further on the ground the question assumes a fact not in evidence, to-wit, that Mr. Collins said anything in respect to that. It is leading. In other words, this attorney is indicating to this witness that he wants this witness to testify to certain things, to attribute them to certain persons in the room.

(Testimony of Charles Spallino.)

Mr. Tyre: Will you answer—well, is there a ruling on that? [385]

Trial Examiner Kent: If anything was said, you may relate the conversation.

The Witness: Well, there was a question asked.

Trial Examiner Kent: By whom?

The Witness: By Levascos, about colored people into the A. F. of L., and Roberts said that they took any color, creed, or race, and Mr. McMurray, I think, I am pretty sure he made that remark, that in the Machinists Local they still barred colored from the Machinists Local.

Q. (By Mr. Tyre): What time of the day was this meeting, Mr. Spallino?

A. It was any time after 10:00 o'clock in the morning. I wouldn't know exactly. It was after 10:00 in the morning.

Mr. Garrett: He has already testified in that respect that the meeting was in the morning, so that is a question by counsel which is repetitious of matter already brought out by the Board.

Mr. Tyre: Let the record show a considerable time elapsed after the question before Mr. Garrett's objection, apparently waiting for the witness to answer so that he could object.

Mr. Garrett: No, I was trying to find a memorandum in my notes, and I found that at the beginning of the afternoon session on March 14, 1946, the witness testified with respect to the time of the meeting, "It could have been in the morning."

(Testimony of Charles Spallino.)

Q. (By Mr. Tyre): Was anything stated at that meeting about the shipping department?

Mr. Garrett: Same objection, leading and suggestive, and already asked and answered.

Trial Examiner Kent: I don't think the question is dangerous. You may answer if you can, if you know.

The Witness: May I have that question again, please?

Trial Examiner Kent: The reporter will read it.

(The question was read.)

The Witness: Well, I stated yesterday that the Teamsters, that is, Mr. Blaney, he had made plans, arrangements, that I would have the shipping department boys ready for him at 8:00 o'clock in the morning, for him.

Q. (By Mr. Tyre): Well, was that what Mr. Blaney stated in that meeting or was that your conclusion?

Mr. Garrett: Just a moment. That is objected to as assuming a fact not in evidence. There has been no representation of Mr. Blaney in that respect, putting words in the witness' mouth, assuming facts not in evidence.

Mr. Tyre: He just testified about Mr. Blaney.

Trial Examiner Kent: Yes.

Mr. Smith: Now, I want to make a further objection, Mr. Examiner. It is obvious from Mr. Garrett's objections that this is repetitious is well-founded. I do not intend to participate in the

(Testimony of Charles Spallino.)

entire proceedings here, which I understand [387] are estimated to take a number of weeks. It seems extremely purposeless to go over testimony two times. If the Examiner is going to permit it to be done two times, there is no limit, it may be done three and four times.

Trial Examiner Kent: I think of course it is rather dangerous, unless we go after things that are really ambiguous and left unclear in the record.

Mr. Smith: The witness said that he testified about this yesterday.

Trial Examiner Kent: Otherwise, we are just getting repetition.

Mr. Tyre: Mr. Examiner, obviously I am not going over the entire witness' testimony. I have already gone over what Mr. Nicoson took two days for, and I am merely trying to clear up a few points I think are very ambiguous in it. If counsel will refrain from interposing these objections into the record, I think the record will be a lot shorter, and especially when their own objections are repetition of an objection. If there is any leading, it will be only for the purpose of clarification.

Mr. Smith: Which is no reason for repetition.

Trial Examiner Kent: Mr. Witness, try to talk louder. Counsel at the end of the table have to hear you, and sometimes they do not seem to follow you.

Q. (By Mr. Tyre): The question was—I will rephrase it, [388] Mr. Spallino. How did you know about those arrangements that Mr. Blaney was go-

(Testimony of Charles Spallino.)

ing to make for you at 8:00 o'clock the next morning, how did you know about it?

Mr. Garrett: That is assuming a fact not in evidence, that Blaney was going to make arrangements for Spallino. As a matter of fact, this witness testified on March 14, 1946, at the end of the afternoon session regarding the shipping department that the Teamster man wanted to know how many employees were in the shipping department, and that "I arranged to get them together at 8:00 o'clock in the morning."

Trial Examiner Kent: If that is the testimony, I think this question is all right. If there is no further testimony in the record, which I do not recollect. Read the question. Listen to it.

(The question was read.)

The Witness: Well, he had asked how many fellows we had in the department and how they felt towards the union, and how interested they were, and I told him that there was a lot of doubts in there, that a lot of them believed in belonging to the C.I.O., and that the best thing for him to come down and talk to them so that they would know what it is all about.

Q. (By Mr. Tyre): When and where did this particular conversation take place?

A. In Collins' office. [389]

Q. That was during this meeting that you have been describing?

A. Yes, sir.

Q. Did everyone present so far as you know hear that conversation?

(Testimony of Charles Spallino.)

A. Well, they could have and they could not have, because there was conversation, after, you know, almost breaking up, and that is where we were almost individually talking to one another, sort of breaking up.

Q. Where did you go after you left that meeting on that day? A. Went back to work.

Q. Did you go to the shipping department at any time after that meeting and before 8:00 o'clock the next morning?

A. Oh, yes, Johnny and I walked in to talk with Bob White and a few of the fellows in that office there, this fellow, this tall fellow, I can't recall his name, who is the assistant there, and we told him that this fellow Blaney was going to be there in the morning and to arrange all the drivers, deck hands and whatever he had, to have them ready for 8:00 o'clock in the morning.

Q. What time do the shipping department employees go to work? A. 8:00 o'clock.

Q. To whom did you make this statement, to have the boys [390] ready at 8:00 o'clock?

A. Well, directly it was this assistant. Bob White was in the front office there, and they were only a few of the men were still in the office there.

Q. Were you present the following morning when this meeting took place?

A. Yes, I went in before 8:00 o'clock to make sure that the men were all ready.

Q. Was Mr. White present at that time?

A. He was. [391]

(Testimony of Charles Spallino.)

Q. Was Mr. White present at that time?

A. He was.

Mr. Collins: Objected to. Just a moment. I move the answer be stricken on the ground that it does not tend to prove any issue. This witness stated yesterday on direct examination he didn't know what Mr. White's capacity was, so I don't see what the materiality of another fellow employee being in there has to do with this case. The evidence as I understand it is that White had certain duties and he was working at them all by himself.

Mr. Tyre: Let's be realistic. I will ask a few more questions, then, if Mr. Collins prefers, about Mr. White to establish the foundation.

Q. (By Mr. Tyre): You have been working at this plant for how many years, Mr. Spallino?

A. Going on nineteen years.

Q. During that time have you ever had any occasion to be in what is known as the shipping department?

A. Yes.

Q. How often?

A. Well, I think I worked for Bob White for over a year as a swamper on a truck.

Q. When was that?

A. That was around 1929, 1930, around that time, probably not quite a year on the truck for Bob White. [392]

Mr. Collins: I think Mr. Tyre is missing the entire point of my objection. I probably unintentionally led him and the Trial Examiner astray. I don't want to unnecessarily clutter up this record,

(Testimony of Charles Spallino.)

which is costing us a dollar and a half a page, but I want to point out to him at this time, I believe the witness has identified Bob White as being the head of the shipping department, and there has not been any shipping department since the end of the war, and since sometime in August last year he has nobody working for him except himself.

Trial Examiner Kent: Yes. I think that was in response to a question from Mr. Nicoson to you. I don't know that that is actually in evidence yet.

Mr. Tyre: That was Mr. Collins' statement, your Honor. I would prefer to let the testimony come from the witness under oath.

Mr. Garrett: What he said and what happened in 1929 wouldn't be of any great value to us.

Mr. Tyre: I will reframe it.

Mr. Collins: I think you'd better.

The Witness: We will find out who is he. Your Honor, may I say something to you?

Mr. Tyre: Just a minute.

Trial Examiner Kent: No.

The Witness: I am all excited now, with these two [393] fellows complaining——

Mr. Collins: Just a moment. I object to any voluntary statement of this witness and I move the volunteered statement be stricken from the record as not responsive.

The Witness: I will smoke a cigarette.

Trial Examiner Kent: Yes, you may, if that will help you.

(Testimony of Charles Spallino.)

Mr. Tyre: May we have a two minute recess for the witness, your Honor?

Trial Examiner Kent: Yes, we will take a two minute recess.

(Short recess.)

Trial Examiner Kent: Very well. On the record.

Mr. Tyre: Was there a question pending?

Q. (By Mr. Tyre): From your own knowledge, Mr. Spallino, do you know whether or not Mr. Bob White has always had, while you have been working for the Company, people under him whom he was supervising and over whom he was a foreman?

Mr. Collins: Just a moment.

Mr. Garrett: May I have the second part please?

Trial Examiner Kent: Read the question.

(Question read.)

Mr. Collins: Just a moment. I object to this as being an attempt to impeach their own witness.

Trial Examiner Kent: Reframe the question. I think that you can bring out questions to show his duties, so far [394] as this man has actual knowledge, what he actually did.

Mr. Collins: There is a much more expeditious method of doing this. The Board has called here Mr. O'Keefe, who is president of the Company and who is under subpoena, and they can ask him that direct question and find out.

Mr. Tyre: May we have the testimony from the witness as to what his experience with Mr. White has been himself, then we can later find out if Mr. White was a foreman.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Yes, I will take that.

Q. (By Mr. Tyre): Mr. Spallino, did you have a conversation with Mr. White on this morning prior to eight o'clock? A. Yes.

Q. And will you state what that conversation was, namely, what you stated and what he stated?

A. Well, I told him that to have these men ready at—that this fellow would be there, would be there at eight, to have the boys ready at eight o'clock, to be sure that those men did get out there.

Q. Did you tell him who you meant by this fellow?

A. Mr. Blaney. I didn't tell him it was Mr. Blaney. I told him it was the fellow from the Teamsters' Union. I didn't name him.

Q. Did such a meeting take place?

A. Yes.

Q. Where did it take place? [395]

A. Right across from the shipping, right in front of the shipping department.

Q. How long did it last?

A. From thirty to forty minutes.

Q. Were you there?

A. Yes, I was present.

Q. Was Mr. Blaney there?

A. The first time Mr. Blaney was not there. He sent a fellow there.

Q. On this particular occasion at eight o'clock in the morning following the meeting in Mr. Collins' office, was Mr. Blaney at that meeting, or was someone else there?

(Testimony of Charles Spallino.)

A. At Mr. Collins' office?

Q. No, no, at this particular meeting at the shipping department, the meeting you are now describing.

A. Was Mr. Blaney there you say?

Q. Yes.

A. No, he was not there, at this first meeting.

Q. Do you know the name of the man who was there?

A. No, I don't. I don't recall his name.

Q. Can you describe him?

A. He was a very tall fellow and he wore an overcoat, and that is about all I can describe him. He said that Blaney could not get there that morning, that he would do all he could to give the boys all the information he could. [396]

Q. Was Mr. Levascos present at that shipping department meeting?

A. I don't think that he was.

Q. There is one other point I would like to clear up, Mr. Spallino, about the signing of these cards. You testified I believe that Mr. Roberts came to you one time, and at which time you had only about 38 cards. I think you also testified that he told you he needed another 16 or so cards signed right away. Do you recall that?

A. Yes.

Q. When did this conversation between you and Mr. Roberts take place?

A. In the front office.

Q. I think you then testified that you went and got the 16 cards signed up, is that right?

A. That is right.

(Testimony of Charles Spallino.)

Q. When was that after this statement from Mr. Roberts that he wanted them signed, that is how soon after was it?

A. Well, I went right over, right then and there, I went to the service department.

Q. Did you go alone?

A. I went alone, yes.

Q. Was Mr. Levascos waiting with Mr. Roberts in the other office? A. He was. [397]

Q. How long were you gone?

A. Oh, I would say about fifteen minutes.

Q. And then where did you go after the cards were signed up?

A. I came back to Roberts.

Q. And you handed him the cards?

A. Yes.

Q. Now I would like to get a little clarification, Mr. Spallino, on this conference you had with Mr. Collins when this leaflet was being shown you. The record shows that the election in this case took place on November 20, 1945, which was on a Tuesday. Bearing that date in mind, can you tell us when you had this conversation with Mr. Collins when he showed you this type of leaflet?

A. It was on that Monday.

Q. On the Monday preceding the Tuesday of the election?

A. Yes, it was Monday afternoon.

Q. How did you happen to be up in Mr. Collins' office that afternoon? A. I was called there.

(Testimony of Charles Spallino.)

Q. Who called you in? A. Jack Levascos.

Q. What did he say to you?

A. He says Collins wanted to see us upstairs.

Q. Was anyone else in Mr. Collins' office when you arrived [398] besides Mr. Collins? A. No.

Q. How many pages was this document which Mr. Collins had in front of him?

A. One page.

Q. Was it in longhand or printed or typed?

A. It was typed. It had some corrections on there with pen.

Q. Did Mr. Collins say anything to you about that leaflet?

A. Well, he said that I should get Mr. O'Keefe's approval.

Q. Didn't he tell you what to do with that leaflet?

A. And to have it printed outside of the plant, to send it out to a printer.

Q. Did he tell you what should be done with it after that?

A. To distribute it at the employees' entrance the same as the C.I.O. distributed their leaflets.

Q. Was anything said about the Five and Over Club at that time about this leaflet?

Mr. Garrett: Objected to as having been asked and answered. Every bit of the witness' testimony on this point is identical with what he gave yesterday afternoon.

Mr. Tyre: I will state on the record, your

(Testimony of Charles Spallino.)

Honor, I don't think it is, and if it is it is certainly clarifying what was on the record.

Trial Examiner Kent: Will you read the question?

(Question read.) [399]

Trial Examiner Kent: I will take the answer.

The Witness: What was that again?

Trial Examiner Kent: Read the question.

(Question reread.)

A. Well, he says that the Five and Over Club, being that they got all those benefits in there, that we had just as much right as the C.I.O. to put out such literature, to advise the members, you know, that the only salvation for the plant would be that the A. F. of L. would have to come in there, because all the other stove manufacturers were under the A. F. of L. banner, and naturally no matter what the C.I.O. would promise that they could never get what they promised, because we had to follow the competitors.

Q. (By Mr. Tyre): What we are talking about now, Mr. Spallino, is the Five and Over Club. I don't want to go over all the testimony that we had yesterday.

A. Well, that the Five and Over had a perfect right to distribute leaflets the same as the——

Q. Did Mr. Collins state to you that the leaflet was to be distributed by the Five and Over Club?

A. Yes, signed by the Five and Over Club.

Q. Now, had the Five and Over Club before this time distributed any literature in the plant?

(Testimony of Charles Spallino.)

A. Well, we have distributed such as the minutes of the meetings that we have had to—so that the members that were [400] not present at the meeting would know what went on at the meeting, and such as that, or notices of special occasions such as dances or things of that order.

Q. About how often did those notices and minutes and so forth go out from the Five and Over Club?

A. Well, I would say every month or two months or so, whenever we would have some sort of a report.

Q. Over how long a period of time was that going on?

A. Well, most of the time, when we had a real big business meeting.

Q. What I mean is the having these leaflets and so forth distributed, was that for the past twelve or ten years or how long?

A. No, for any meeting that followed—say for instance we had a meeting tonight, well, the secretary would get some leaflet printed and give the minutes and details of what went on at that meeting so that the members would know what went on at the meeting.

Q. What I am asking you, Mr. Spallino, is how long has this been going on?

A. Well, this has been going on, that is with this secretary is about the first time, to notify all members of the preceding meetings, that is 1945, this

(Testimony of Charles Spallino.)

fellow here seemed to have an idea of his own to let the members know, this secretary that I had. It was his idea. [401]

Q. Let me ask you this: When this literature of the Five and Over Club was put out, was that written in longhand or was it typed or was it printed?

A. It was on a teletype or whatever you call it in our office.

Q. You mean a mimeograph?

A. A mimeograph.

Q. Where was that material mimeographed?

A. In the personnel office.

Q. Of the Company?

A. Of the Company.

Q. When as far as you can remember was the first time you had any of this material mimeographed by the Company?

A. Well, I would say around November. Around November, we usually if we had money in our treasury, we had what we called turkeys for the members, and we naturally put out a leaflet that we wanted a dollar from each member to pay toward these turkeys, and they was all notified around in November. That is when it really started.

Q. November of when?

A. Well, it was near the 18th or 19th, somewhere around there.

Q. What year? A. 1945.

Q. When did you first have minutes mimeographed? [402]

A. Well, this year of 1945.

(Testimony of Charles Spallino.)

Q. Was that in November or earlier than that?

A. Well——

Mr. Garrett: Does counsel mean when this witness first had it done or when did the Five and Over Club first have it?

Mr. Tyre: The Five and Over Club.

The Witness: Minutes?

Q. (By Mr. Tyre): When did the Five and Over Club first have minutes or anything else mimeographed by the Company?

A. Let's see. I would say around February or March, around that time, we had some of the minutes on the floor.

Q. Of 1945? A. Of 1945.

Q. How often did that Club have its meetings?

A. Every second Thursday of each month.

Q. Were the minutes of each meeting mimeographed in that way every month after February?

A. Not regularly.

Mr. Collins: Objected to as having been asked and answered two or three times now.

The Witness: Not regularly, just special occasions, if there was something very important voted on it went on the printing.

Q. (By Mr. Tyre): As far as you know, Mr. Spallino, had the Five and Over Club ever had any of its material [403] printed outside the plant before?

A. No, outside the dance tickets, nothing.

Q. Did Mr. Collins tell you why he wanted this particular leaflet printed outside the plant?

(Testimony of Charles Spallino.)

A. Because that was supposed to be——

Q. I asked you did he tell you why?

A. Yes.

Q. What did he say?

A. He says so that it won't be like the Company is in on it that it is all in the Five and Over's hands, they have done it on their own.

Q. You stated that Mr. Collins told you to get Mr. O'Keefe's approval. Did you obtain his approval on the leaflet? A. No.

Q. What did you do with that leaflet when you left Mr. Collin's office?

Mr. Collins: Objected to as having been asked and answered. He said he went to Mr. O'Keefe's office and Mr. O'Keefe started to make corrections on it and finally called for his secretary.

Mr. Tyre: I don't think it has——

Trial Examiner Kent: I think I remember that, yes. He started to make his own corrections, then he decided to make a speech later on. Was the leaflet ever printed?

The Witness: Never. [404]

Trial Examiner Kent: I think the record is quite clear. That was my recollection, that O'Keefe started to make certain corrections and alterations and then decided rather than let the leaflet be used that he would make a speech to the employees.

Mr. Collins: I now make the same motion I made yesterday, and I move to strike the testimony concerning the leaflet out on the ground that it was never printed and never used, therefore it could not

(Testimony of Charles Spallino.)

have been shown to have any influence on anybody and it does not tend to prove or disprove any issues in this case. It was never used.

Trial Examiner Kent: The motion will be overruled, the motion to strike. The record may remain.

Q. (By Mr. Tyre): Let me ask you this question; I don't think it was answered. Did you see Mr. O'Keefe about this leaflet on the same day you saw Mr. Collins, or was it the next day?

A. No, that was the following morning.

Q. I see. What time of the day did you see Mr. O'Keefe the following morning?

A. The first thing in the morning. First shortly after eight o'clock.

Q. And Mr. Levascos I think you testified was with you at that time. After you left, by the way, was anyone else in Mr. O'Keefe's office that morning besides you and Mr. [405] Levascos and Mr. O'Keefe?

A. Mr. Collins was in there. You mean the time of this leaflet?

Q. Yes, when you discussed this leaflet with Mr. O'Keefe.

A. Mr. Collins and later the secretary.

Q. After you left Mr. O'Keefe's office, right after you left, did you have any further conversation with Mr. Collins and Mr. Levascos?

Mr. Collins: Objected to as having been asked and answered.

Mr. Tyre: What was the answer?

(Testimony of Charles Spallino.)

Mr. Collins: I think I made my objection to the Examiner, Mr. Tyre.

Mr. Tyre: Let us have the answer.

Trial Examiner Kent: He may answer.

The Witness: What was it?

Mr. Tyre: Read the question.

(Question read.)

A. Well, that was later. That was later in the day.

Q. (By Mr. Tyre): What time was that meeting with Mr. Levascos and Mr. Collins?

A. Well, that was in the afternoon, around two o'clock, anywhere around two or three o'clock.

Q. How did you happen to be called up to Mr. Collins' office at that hour? [406]

A. At that hour, I was in the lunch stand and Johnny Levascos came after me, and said that they were going to call a Five and Over meeting and for us to go up and see Collins.

Q. What did you happen to be doing at the lunch counter at that time?

A. Well, I had taken over there because I had made changes in this lunch stand, I had fired the help that I had there and I had new help there, so I stayed at this lunch counter for about three days to get it operating.

Q. Was this at lunch time?

A. Well, it was near to the two o'clock recess that we had.

Q. The Five and Over Club operates this lunch stand, is that right? A. Yes.

(Testimony of Charles Spallino.)

Q. How long were you with Mr. Collins and Mr. Levascos on this occasion?

A. Oh, I was there about twenty-five to thirty minutes, around there.

Q. Was there any discussion at this meeting with Mr. Levascos and Mr. Collins as to what should be said in this speech to be made to the Five and Over Club?

A. Well, he started off suggesting to me——

Q. Answer yes or no. [407] A. Yes.

Q. What was said?

A. That he suggested I would make a speech.

Q. By "he" who do you mean?

A. That Collins suggested that I would make a speech to the members of the Five and Over.

Q. Did he suggest to you what you should say?

A. He started to dictate and I interrupted and I told him I didn't think that I was going to make a speech, because the members elected me in office in good faith and I could not be dictating to them.

Q. Just a minute, Mr. Spallino. Did he tell you what you should tell the Five and Over Club Members? A. Yes, he said——

Q. What did he say?

A. He said that the CIO was a radical organization, a bunch of communists, that they were going to give us nothing but trouble, that the A. F. of L. was our only salvation, because no matter what the CIO would promise they still could not—well, I don't remember the exact words he used just now, but he used a very fancy word, being that we were

(Testimony of Charles Spallino.)

three men together, and he told me "Are you scared to make this speech?" I says, no, I am not scared. These fellows put me there in good faith and I am not going to dictate to them which labor union is best for [408] them because I don't know which is best, because I never was a union man myself.

So Levasco, being that he had been a union man before, volunteered for this speech, so we finished, Collins had finished dictating the speech and so it was understood that Johnny Levascos was going to make the speech and I left Collins' office, and that is when Levascos suggested that we should go out and get a shot of whiskey.

Trial Examiner Kent: I think we are getting repetitious.

Mr. Tyre: All right.

The Witness: It was good, too.

Q. (By Mr. Tyre): I think you testified that you had a conversation with Mr. O'Keefe in his office in the morning sometime after the election, is that right? A. Yes.

Q. What day was that?

A. That was the following Monday after the election.

Q. Did Mr. O'Keefe state anything to you at that time about the CIO?

Mr. Collins: Just a minute. I object to that question upon the ground it does not tend to prove or disprove anything at issue in this case. What O'Keefe would tell one individual employee in his

(Testimony of Charles Spallino.)

private office certainly could not have any effect on some five hundred others on the outside. [409]

Mr. Tyre: I will withdraw the question. I think it has been asked and answered. I don't want to be repetitious.

Q. (By Mr. Tyre): Do you recall any time in January of 1946 after the election, Mr. Spallino, whether or not Mr. Collins made any speech to all the employees? A. He did.

Q. Do you recall what time of the day that was?

A. I think it was twelve-thirty, right after the lunch hour.

Q. Right after the lunch hour? Was that during working hours? A. Yes.

Q. Where did this speech take place?

A. In the front near the office.

Q. And were all the employees assembled there?

A. They were all assembled there, yes, sir.

Q. And how did he speak to them, was it with or without a microphone?

A. No, he had a microphone.

Q. He spoke over the loudspeaker system?

A. That is right.

Q. Will you tell us what he said?

Mr. Collins: I have the speech here if you would like to have it. [410]

The Witness: Maybe I will refresh my memory.

Mr. Tyre: Upon receiving that assurance we will withdraw that question. Nothing was said yesterday about that speech.

(Testimony of Charles Spallino.)

Trial Examiner Kent: No, I don't recollect hearing about that.

Mr. Collins: You might as well ask him though. I want to ask him a few questions on cross-examination on what was going on outside the factory while that was going on, so I would like to have something to cross-examine on.

Mr. Tyre: Withdraw the question.

Mr. Collins: Very well.

Trial Examiner Kent: Well, are you through? It is about ten minutes to twelve. Supposing we come back at a quarter of two rather than just get started with another counsel.

Mr. Collins: Is all the direct examination of this witness through now?

Mr. Tyre: I don't know what you mean by direct examination. My examination of the witness at this time is completed, subject to recalling him if anything comes up.

Trial Examiner Kent: We will adjourn then until a quarter of two. I don't think it is worthwhile probably to start another counsel's cross at this time. [411]

And gentlemen, let's try to come at a quarter of two.

(Whereupon, at 11:50 o'clock a.m., a recess was taken until 1:45 p.m.) [412]

After Recess

(The hearing was reconvened at 1:45 o'clock p.m.)

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Collins:

Q. The CIO Union from time to time passed out various handbills in and around the factory of O'Keefe and Merritt and Pioneer Electric Company, did they not?

Mr. Purver: I object to that. I see no relevancy to a question as to whether the CIO passed out handbills.

Mr. Collins: This is cross-examination. I am not under any obligation to disclose the relevancy of my remarks on cross-examination.

Trial Examiner Kent: Read the question, Mr. Reporter.

(Question read.)

A. Yes, they did.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): I will show you a handbill which is purported to be issued by the Local 1981, U.S.A., CIO, 41 East Slawson Avenue, Maywood, California, entitled 'The Facts. I will ask you if you ever saw that handbill, Mr. Spallino? [413]

Mr. Purver: I don't see what this can prove in

(Testimony of Charles Spallino.)

regard to the case. I am objecting on the ground I don't see what this document can prove. It is not only conceded that the CIO did pass out handbills and leaflets, it has been testified to that effect.

The Witness: I never seen that.

Q. (By Mr. Collins): You have never seen that? A. No.

Q. Very well.

Trial Examiner Kent: By the way, Mr. Collins, you may wait until you are putting in your own case, but these two exhibits that you handed to the reporter, I think when you are putting in your own case, I suggest that they be marked.

Mr. Purver: May I also humbly suggest that we be given an opportunity to see the exhibits. You referred to two exhibits.

Mr. Collins: They were made in connection with the motion for continuance, and I don't believe that they are literally and actually exhibits. They are in support of my application.

Trial Examiner Kent: Since they are not offered, you will have an opportunity to inspect them before they are received.

Q. (By Mr. Collins): Mr. Spallino, your brother, I believe, [414] is named Joseph Spallino, is that right? A. That is right.

Q. He was the plant superintendent of the Pioneer Electric Company, was he not, during the war?

A. He was.

Q. And he is now plant superintendent of Pio-

(Testimony of Charles Spallino.)

neer Electric Company in the plant of the O'Keefe and Merritt Company, is that right?

A. Well, according to the new set-up there, he is.

Q. And you have a brother, do you not, who is a foreman at the O'Keefe and Merritt Company or the Pioneer Electric Company, whichever name you prefer to call them by?

A. Well, under the new, it is the Pioneer Electric he is working for, Pioneer Electric now.

Q. Isn't he the foreman of one of the departments there? A. He is.

Q. I believe that you testified that you are the former president of the Five and Over Club?

A. That is right.

Q. Isn't it part of your duties as president of the Five and Over Club to run the lunchroom or be generally in charge of running the lunchroom?

A. I am responsible for it.

Q. You had to spend a lot of your time on that work, did you not? [415]

A. That is right.

Q. Did you supervise the buying of these various articles that you sold, is that right?

A. Well, I looked into it.

Q. And you had to be sure that the employees of the Five and Over Club lunchroom were not stealing the money and see that the people got charged for everything purchased, is that so?

A. That is right.

Q. It was also part of your duties, was it not, to see that the various cigarette vending machines

(Testimony of Charles Spallino.)

around the plant were filled with cigarettes, whenever you could get them?

A. No, I merely O.K.'d the order of the fellow who had the permission to have them in the plant.

Q. How about the candy vending machines?

A. That is the American Legion's doing.

Q. Hasn't that from time to time been a concession of the Five and Over Club?

A. It was at one time.

Q. And it is the duty of the president, generally speaking, to supervise that sort of operation and to see that there is candy in there when there is candy available? A. No.

Mr. Tyre: I will object to the—just a minute. I object to that unless the time is stated, inasmuch as the [416] witness has said it is not now.

Trial Examiner Kent: You may show the time in which these various things occurred.

Q. (By Mr. Collins): Do you recall when the Five and Over Club was founded?

A. In 1935.

Q. Were you one of the charter members of it?

A. That is right.

Q. And all during that time you have either been an active member or an officer of the Five and Over Club, isn't that true? A. That is right.

Q. So all during that time it has been part of your duties as an officer and an active member of the Five and Over Club to go to various parts of the O'Keefe and Merritt plant to take care of your

(Testimony of Charles Spallino.)

duties as an officer of the club, isn't that true?

Mr. Nicoson: 1935?

Mr. Collins: I say all during that, either as an officer or otherwise, it has been part of his duties to go about the factory.

The Witness: As an officer, yes.

Mr. Nicoson: I don't think I am getting this. I just wanted to find out if it means from 1935 to date.

Q. (By Mr. Collins): Now, then, Mr. Spallino, at or about [417] the time that this CIO election was held on November 20th, you were an officer of the Five and Over Club, were you not?

A. I was.

Q. It was part of your duties at that time to see that the supplies went in the restaurants, wasn't it?

A. It was.

Q. You had to walk out of your department to go to the restaurant and you had a right to go at any time of the day, as a matter of fact, didn't you?

A. Well, a few times I would get a bawling out for taking up so much time.

Q. You had the right to go, isn't that so, you always were allowed, when you got the bawling out, that is the only thing that ever happened, nobody ever fired you or disciplined you or anything of that kind?

A. Yes.

Q. Wasn't it part of your duties at the time you were talking about the organization work going on to have the employees sign up for their Christmas turkeys?

A. That is right.

(Testimony of Charles Spallino.)

Q. When you talked to Mr. Frank Vacquero, didn't you tell him, as a matter of fact, that you were getting the employees to sign up for Christmas turkeys?

Mr. Tyre: I will object to the question unless a proper foundation is laid as to time and place. [418]

Mr. Collins: This is cross-examination, if the court please.

Trial Examiner Kent: Yes.

Mr. Tyre: Still we want to know the time and place of the conversation upon which you are cross-examining.

Mr. Collins: All right. What is the ruling?

Trial Examiner Kent: He may answer.

The Witness: What was the question?

Q. (By Mr. Collins): Do you recall at the time at or shortly before this election when you had a conversation with Mr. Frank Vacquero, a foreman, one of the foremen of the O'Keefe and Merritt plant, that you told him that you were out of the department by reason of the fact that you were getting the boys signed for their Thanksgiving turkeys?

A. Yes, and further outside the Thanksgiving turkey, I said they just piled up a little more on me, I have to sign them for the A. F. of L., too.

Q. All right. Now, Mr. Spallino, when you were going from department to department around that place and you were signing up for turkeys, you had to go to each individual member of the Five

(Testimony of Charles Spallino.)

and Over Club in the shop, isn't that so?

A. That is right.

Q. And you had to come back frequently because some of them were not there at the time, didn't have the money, isn't that so? [419]

A. Yes, sir.

Q. So you had to run around the factory to sign up for turkeys, among other things, isn't that true?

A. That is right.

Q. As a matter of fact, Mr. Spallino, there is nothing unusual about your being seen in any part of the factory during all the time that you were president of the club, is there?

Mr. Tyre: I will object to that. It calls for a conclusion.

Mr. Collins: If I understand the rules of this proceeding properly, Mr. Trial Examiner, I understood that Mr. Tyre of the C.I.O. had the right to bring out matters which were not brought out on direct examination, but he was not to participate in cross-examination and objections and stipulations and so on. I would like to have a ruling on this at this time. I think that on the first day when this matter was originally brought to your attention, you made a ruling and I believe counsel here are in violation of the ruling.

Trial Examiner Kent: I think he may properly interpose objections. Read the question, will you please, Mr. Reporter.

(The question was read.)

(Testimony of Charles Spallino.)

Trial Examiner Kent: The answer may be taken. You may answer.

The Witness: I didn't understand that.

Q. (By Mr. Collins): Well, what I am trying to get at, Mr. Spallino, [421] wasn't it your custom at all times before this union trouble or anything else to be seen in all parts of the plant going here and there to take care of the club's business?

A. Yes.

Q. Whatever it might be? A. Yes.

Q. So there would be nothing strange for a foreman to see you in any part of the plant, isn't that so?

Mr. Tyre: I will object to that on the same ground.

Mr. Collins: I will rephrase the question.

Q. (By Mr. Collins): The foremen saw you in all parts of the plant at all times, did they not? You have to answer that question, not by nodding.

Mr. Nicoson: Of course, that is a physical impossibility, seeing him in all parts of the plant at all times. I object to the form of that question as being indefinite, and also an impossibility. It cannot be answered. A man can't be in all parts of the plant at all times. Maybe he can, but I have never seen one.

Mr. Reed: That depends on the size of the plant. About two by four he can be.

Mr. Nicoson: At least we know this is 12,000 square feet.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Wasn't it your custom, Mr. Spallino, to be in every department at some time or other every day or [421] nearly every day?

A. No, not every day.

Q. How often was it your custom to be in every part of the plant?

A. Well, the only time, if there happened to be a check to be mailed to a certain member, or sometimes instead of mailing a check, I could find the member who lived near this party that had this compensation check, I would go to the department and find the man who lived near this member and save the trouble of mailing it and get the check earlier by doing it that way.

Q. How often did you circulate about the plant?

A. Well——

Mr. Tyre: I will object to the question as perfectly vague, no time, no place.

Trial Examiner Kent: Well, this is cross-examination. He may answer.

The Witness: Really, my running around the plant in Five and Over work outside of something special was a matter of a few minutes, to go in the office and to sign checks and to hand those checks out.

Q. (By Mr. Collins): I want to know to the best of your ability, I want you to attempt to estimate the number of times that you would go in any department of the plant over a period of, say, a year, beginning January in 1944, when you [422]

(Testimony of Charles Spallino.)

took office as president of the Five and Over Club?

A. 1945.

Mr. Tyre: I object to that as a fact not in evidence. The witness became the president of the Five and Over Club in January, 1944.

Mr. Collins: Well, January of 1945, when he became president, from that time on, how often did you get around?

The Witness: Well, during my campaigning for a dance, to pep it up, it would probably take me a day or so to get my committees active.

Q. (By Mr. Collins): To get back to my original question, it was nothing unusual for you to be in different departments of that plant from day to day, was it? A. No.

Q. Now, when the Five and Over Club had its entertainments, they served beer at the parties frequently, did they not? A. That is right.

Q. Wasn't it part of your duties to see that the beer was ordered and delivered and so on?

A. Well, I would say the treasurer or the secretary saw that it was ordered and delivered.

Q. But you to assist and you had to arrange for the orchestra to play and to get the tickets and so forth, isn't that true? A. That is right.

Q. That is not only true at the time you were president during [423] 1945 and part of 1946, but that has been your custom when you were present on a prior occasion, is that so?

A. That is right.

(Testimony of Charles Spallino.)

Q. Then when you were the vice-president, you had similar duties, is that so? A. Exactly.

Q. You were an officer, I believe, at one time for four years, I believe you said? A. Yes.

Q. So for a period of many years it has been your job as an officer of this club at any time of the day that you chose, practically, to be in any part of the plant, isn't that true?

A. That is right.

Q. Mr. Spallino, do you have any trade or profession?

A. Yes, I was in refrigeration. I was in the repair department.

Q. No, I mean, are you a certified welder or refrigeration engineer, do you have any trade, any accepted trade in that sense of the word?

A. Well, I can call myself a jack-of-all-trades. I have done some riveting there, I riveted half of that plant, I helped cut the metal, I helped lay it out, I done the riveting, bucking up or whatever you call it. I have been in refrigeration department, repaired refrigeration and inspected refrigeration. [424]

Q. Did you ever drive a truck?

A. No, I never drove a truck.

Q. Did you ever work in the shipping department? A. Yes.

Q. What were your duties in the shipping department? A. I was a swamper.

Q. A swamper on a truck?

A. That is right.

(Testimony of Charles Spallino.)

Q. I don't intend to be facetious, but you said you were a jack-of-all-trades. Do you mean by that that you are not the master of any, or that you are the master of all trades?

Mr. Nicoson: I object to that as being immaterial, and not a proper question.

Mr. Collins: These are matters gone into on direct examination.

Mr. Tyre: I don't think we discussed what his occupation was, as a matter of fact.

Mr. Garrett: At the beginning of his testimony.

Mr. Nicoson: That is correct.

Mr. Garrett: He testified as to the nature of his work. I think it is very applicable to find out what his activities are, in view of possible bias and prejudice.

Mr. Nicoson: I have no objection to that, but I do object to the form of the question.

Mr. Collins: On Page 139 of the official transcript of this hearing, [425]

“Q. (By Mr. Nicoson): In what capacities have you been employed?

“A. Oh, I have had at times every department in there, I have worked in. Pretty well refrigeration is the biggest part of my time, I have spent most of my time in refrigeration, and I have worked as a carpenter-helper, as maintenance, and almost everything you can think of. I have even done some building there as a riveter.”

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): I want to know, Mr. Spallino, do you have any trade? Are you a carpenter or a bricklayer or cement man, is there any trade that you have?

A. Well, I don't have a diploma to any of them, those trades.

Q. Mr. Spallino, you and I will get along a lot better if you will just answer my questions. If you have a trade say yes and if you don't have say no. That is all I want. I want an answer.

A. What is a trade?

Q. Are you a bricklayer? A. No.

Q. Are you a machinist? A. No.

Q. Are you a truck driver? A. No. [426]

Q. Are you a refrigeration engineer?

A. No, I am not an engineer.

Q. Are you a refrigeration mechanic in the sense that we employ out there as a serviceman?

A. As far as this place is concerned, I am.

Q. You feel qualified to get out as a serviceman?

A. That is right.

Q. You have worked, I believe you said, as a swamper on a truck? A. That is right.

Q. What was the last job you had at O'Keefe and Merritt Company?

A. Oh, I was repairing motors up until last Wednesday. They sold the job right from under me.

Q. You have not been able to go back to work since Wednesday, anyhow?

A. I don't have a job when I get back. As far

(Testimony of Charles Spallino.)

as I know it will be a new job, because the job was sold.

Q. That is the reason I am asking these questions, Mr. Spallino, so that I may try to decide where you are going to go back to work, I am trying to specifically find out what you can do.

Mr. Tyre: Just a minute. I am going to object to that as an improper purpose, and this examination won't be material to the issues here involved.

Mr. Collins: Article IV under Section 8 of the Act itself, the rules of this court, say that the discharge or otherwise discriminate against. I am very carefully laying the foundation for that kind of a job this man is able to do when he gets back, and I want to provide for him if the job is not there.

Trial Examiner Kent: There are no such allegations, of course, in the complaint, so I don't think that you have to meet that.

Q. (By Mr. Collins): I believe you testified, Mr. Spallino, that your brother brought you up to my office in the presence of Mr. W. J. O'Keefe at the time when you originally affiliated yourself with the C.I.O. Do you recall that testimony?

A. That is right.

Q. At which time I think you testified that you were dissatisfied with the working conditions, and so on, and you made those statements in front of your brother and in front of Mr. W. J. O'Keefe, who, at that time, was plant superintendent?

A. Of Pioneer Electric.

(Testimony of Charles Spallino.)

Q. Well, Mr. O'Keefe was plant superintendent of O'Keefe and Merritt, wasn't he?

A. Joe was superintendent of Pioneer Electric at that time.

Q. Now, there has been a change where Mr. O'Keefe is doing something else and your brother is now superintendent of [428] Pioneer Electric, isn't that the situation?

A. Well, from what I understand, he is Pioneer now.

Q. In fact, in that conversation didn't you state that you were receiving 90 cents per hour when you were hurt? A. When I was hurt?

Q. At the time that you were injured, wasn't your daily 90 cents per hour?

A. At the time that I was hurt?

Q. Yes.

A. I believe I was making 85 cents an hour.

Q. 85 cents an hour, that is right, at the time you were hurt. When were you hurt?

A. That was somewhere in 1942.

Q. In the spring or the fall or the summer, do you recall?

A. It could have been in the spring.

Q. Now, then, when you came back, they gave you a job which paid \$1.25 to \$1.35 an hour?

A. No, not right off the bat.

Q. When you went to work weren't you receiving \$1.25 and weren't you receiving \$1.35 an hour?

A. I was not.

Q. How much were you receiving?

(Testimony of Charles Spallino.)

A. On night work I was making six cents more than my day rate.

Q. What was your day rate? [429] A. 85.

Q. How long after you came back to work did you get \$1.35 an hour?

A. The time that I got that \$1.35 is a time later; can I repeat the whole story, how much I got, and what job?

Q. Well, if it isn't too long.

A. It will take a little while.

Q. I think we will get along faster if you will just answer the questions. How long was it after you came back to work that you were getting this \$1.35?

A. I would like to repeat the whole story. It is very interesting.

Q. If anybody wants to hear the interesting story, your attorneys will ask you for it. I just want to know how long it was after that.

A. I would say it was a matter of a month, maybe.

Q. About a month after you came back from being sick? A. Yes, I got a piecework job.

Q. When they put you on the night job, didn't the plant superintendent, Mr. Bill O'Keefe, offer to make you a foreman?

A. Well, sort of an inspector.

Q. I am asking you now the direct question, didn't he tell you he was going to make you a foreman?

(Testimony of Charles Spallino.)

A. Yes, he wanted me to be head of the department.

Q. So he did offer you a job as foreman at that time, didn't he? A. Yes. [430]

Q. Now, I believe that at the time of this original activity of yours where you went out to the CIO meeting on Sunday, I think you testified that was while the war was going on, isn't that so?

A. It could have been, yes.

Q. While you were working on generators. Are you able to fix a date of that, and what type of operation you were doing?

A. I was not working on the generators at the time.

Q. What were you working on?

A. Well, at that time I was working as a layout man in the front end of the shop.

Q. That was war work, was it not?

A. I suppose it was.

Q. Work in connection with the war effort?

A. Yes.

Q. And you knew, of course, that O'Keefe and Merritt were manufacturing a generator that was used in connection with radar, did you not?

A. I don't know anything about radar.

Q. Didn't you know that they used those generators to generate the power to operate the radar plants on ships and isolated islands all over the world? [431]

A. I don't know about radar. I know that it

(Testimony of Charles Spallino.)

generated power in radio and so forth, but they used it for—I don't know anything about radar.

Q. You did know we didn't want any labor trouble or strikes during the war to impede the war effort, did you not?

A. That is right. We have been fighting all unions.

Q. Whether we were fighting them or not fighting them, we didn't want to have any strikes or labor troubles during the war; answer yes or no? He can't get your nods. A. Yes.

Q. Now, when you came into my office and talked to me, you had those facts in mind, did you not, that we were engaged in a war, you knew that?

A. Yes.

Q. And I am a member of this Five and Over Club too, am I not? A. Yes, that is right.

Q. So as a matter of fact, I am one of the charter members? A. You are a charter member.

Q. Isn't it one of the rules and regulations and part of the constitution of the Five and Over Club that any member can make a speech any time he wants to?

Mr. Tyre: Just a minute. I will object to that. If there are any written rules and by-laws in the constitution of the Five and Over Club, they are the best evidence, and let's [432] have them in the record.

Mr. Collins: It would unnecessarily clutter up the record. There are no rules of evidence before

(Testimony of Charles Spallino.)

this Board at all, says he, and such a rule seems to me ought to work here.

Mr. Tyre: I think it would be dangerous, if the court please, to start permitting evidence of conclusion of witnesses on matters which can be directly proven by printed material. I think the printed constitution and rules of the club is what we ought to have in the record, not have some conclusions as to what those rules say.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. Spallino, isn't it customary for any member of the Five and Over Club to get up and make a speech if he wants to?

A. That is right.

Q. As a matter of fact, I have made a lot of speeches in the Five and Over Club, have I not?

A. You made the first one.

Q. That was long before we ever heard of the CIO, isn't that true?

A. That is right.

Q. I have talked about dances and I have talked about picnics and I talked about giving O'Keefe an award of merit, [433] the American Legion flag, and any number of things that the Five and Over Club has sponsored I have talked about, isn't that true?

A. How is that again?

Q. I have probably made 50 speeches at that Five and Over Club, isn't that so?

A. I wouldn't say that many.

(Testimony of Charles Spallino.)

Q. About how many? It seems that many.

A. I have heard maybe about half a dozen, when we organized, and when we were holding our meetings there, I heard you present the by-laws to the Five and Over Club and the—told us what the Five and Over was originated for, and on different occasions of presentation of the Naval E and all that, you made a speech there. I think I have heard about five or six of your speeches.

Q. Now, then, Mr. Spallino, the Five and Over Club also had a grievance committee machinery?

A. That is right.

Q. And it was part of your duty, was it not, it was part of the duty of the president, I mean, to go into the various departments of the company and to act as the grievance man for each department, isn't that so? A. That is right.

Q. So in the time that you were president of the Five and Over Club, you did go into these various departments and did [434] select committeemen for this grievance committee, isn't that true?

A. That is right.

Q. And it was also the custom of the club, was it not, when they had a grievance that could not get settled by their foreman, to go to Bill O'Keefe and bring them into me occasionally?

A. I was told to bring them into Mr. O'Keefe, because Mr. O'Keefe was——

Q. Mr. O'Keefe, Sr. or Jr.? A. Senior.

Q. And there were many occasions when griev-

(Testimony of Charles Spallino.)

ances were brought by the Five and Over Club grievance committee to me?

A. I think on a couple of occasions they were brought up to you. I brought them up myself.

Q. So when your brother brought you up, whatever the occasion was, to my office to take up your grievance, that was in line with what we had been doing all along on other occasions, is that it?

A. Yes, but I was bawled out for going to a CIO meeting.

Q. You were not bawled out in my office, were you?

A. Well, you were working through my brother.

Mr. Collins: I move that that answer be stricken out on the ground it is not responsive. This witness doesn't know who is working through his brother. May that part go out? [435]

Mr. Nicoson: I think that is a proper answer. That is exactly what he asked for.

Mr. Garrett: Let us have the question and answer reread.

(The record was read.)

Trial Examiner Kent: It may be stricken. You can go into it on redirect.

Q. (By Mr. Collins): As a matter of fact, you were having a little fight with your brother at that time, weren't you, Mr. Spallino?

A. I haven't had any fight with my brother.

Q. Not even yet? A. Not even yet.

Q. What do you call those little discussions, do

(Testimony of Charles Spallino.)

you just call them little family discussions you had been having with Joe?

Mr. Tyre: Just a minute. I object. There is no testimony thus far about family discussions, this trouble Mr. Collins is talking about.

Mr. Collins: He had a little discussion in my office with him.

Mr. Tyre: Let's confine the question to the particular discussion.

Q. (By Mr. Collins): Had you had other discussions with your brother besides the one you had in my office? [436] A. Yes, he said——

Q. Just answer the question yes or no. Let's don't get into some argument now. A. Yes.

Q. Would you characterize those as heated discussions?

A. Well, they were kind of heated we had.

Q. Almost to the point of actual physical combat with him there, with your brother, isn't that true?

A. Combat. Say, we are getting out of line now. Now you are going into something I am not familiar with.

Q. Did you almost have a fight with your brother?

A. We are talking about the time that I came into your office after that CIO meeting, that is what I am talking about right now.

Q. Mr. Spallino, I am conducting the cross examination. If you will confine yourself to answers to what I ask, and then let your counsel or either of

(Testimony of Charles Spallino.)

the counsel on the other side of the table straighten it out if that is not right.

A. I don't think my counsel know anything about those things.

Mr. Nicoson: I will have to admit the colloquy here has indicated the question is unintelligible to the witness.

Q. (By Mr. Collins): Mr. Spallino, have you had a fist fight with your brother in the last year?

A. Never.

Q. Have you almost had one? [437]

A. No. We talked——

Q. Have you sworn at each other?

A. No.

Q. You have had some pretty severe arguments, though?

A. Well, we argue just like regular Italian people do. We have argued.

Q. I see. At the time that you came into my office you just had one of these regular Italian arguments with your brother, is that true?

A. He was arguing with me.

Q. I think that you testified that I asked you what was the trouble, is that true?

A. No, you wanted to know why he was arguing with me.

Q. I am just asking my question, did I ask you what was the trouble? Is that true, did I say that to you? A. No.

Q. Didn't I ask you what was the matter with you, or words to that effect? A. Yes.

(Testimony of Charles Spallino.)

Q. Did I threaten you with any sort of disciplinary action if you didn't answer that or did I try to straighten the trouble out for you and get you a raise?

A. Well, I will tell you, you was always confusing me there for a while, because you went to Joe and Joe says to me that you had talked to him—— [438]

Mr. Collins: Just a moment. I move this be stricken out as—on the ground it is not responsive. This witness doesn't know whether I met Joe.

Q. (By Mr. Collins): Was there any way that I was going to do anything to you for not answering, Mr. Spallino?

Mr. Tyre: I will object to that. That calls for a conclusion.

Mr. Collins: I will withdraw the question. Strike the question.

Q. (By Mr. Collins): Did I ask you what your trouble was? A. Yes.

Q. And your trouble was that you were not getting enough money, isn't that right?

A. Yes.

Mr. Tyre: I will object to that. Just a moment. He has not stated whether that was the question he asked him, whether that was in Mr. Collins' mind at this time or later. It is obvious this witness can't testify.

Trial Examiner Kent: This is cross examination, of course. You may answer.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): What was your trouble?

A. Well, my trouble was I was not making the right wages, and I had a settlement coming from my accident which the doctors told me that my claim was in San Francisco office for the last three months, and I inquired and found out that the claim had [439] never been put in, and the doctor kept telling me it was in, and I talked to you about that case not so long before, and you had told me to go to the Commissioner's office, at the Labor Commissioner's office or whatever you call it. I lost two days to go down there and find out that the doctor hadn't turned in a claim, he kept telling me well it is in and I will get at it and stalling me off for over six months, and I told you that I was not getting any settlement and my arm was in bad shape, and I could not do the work that I had.

Q. Did you finally get that trouble settled?

A. Yes, after I took care of it.

Q. I see. Now, then, the next time I believe you testified you came to my office was when you had a conference, when Johnny Levascos brought you in, is that true?

A. That is right.

Q. Did Johnny Levascos ask you to come up there, or did you ask Johnny Levascos to come up?

A. He says let's go see Collins.

Q. When did you first join the A. F. of L.?

A. The A. F. of L.?

Q. Yes. A. I never really joined.

Q. When did you first join the C. I. O.?

(Testimony of Charles Spallino.)

A. At the time I joined, well, when it first came out there.

Q. You mean two years ago? [440]

A. I had signed an application. I have never been a paid-up member until after the election.

Q. But you had signed an application or whatever you did over two years ago, is that correct?

A. Sure.

Q. So at the time when you were arguing for the A. F. of L., you were actually a member of the CIO, isn't that so?

Mr. Tyre: I will object to that. That calls for a conclusion of this witness.

Trial Examiner Kent: Yes, I think that calls for a legal conclusion.

The Witness: Well, I wouldn't know.

Q. (By Mr. Collins): Did you at any time sign up with the A. F. of L.?

A. Yes, Johnny Levascos came up to me and I signed.

Q. When was that?

A. That was after the election.

Q. When? A. After the election.

Q. You joined the A. F. of L. after the election?

A. I didn't join. I signed.

Q. Now, when Mr. Levascos brought you into my office, didn't I tell you that you could join any union or work for any union you wanted to?

A. I don't think that was the discussion. I think—— [441]

Q. Wasn't that one of the remarks that was

(Testimony of Charles Spallino.)

made to you, that you could work for any union that you wanted to?

A. No, there was nothing like that said.

Q. You don't recall that? A. No.

Q. You would not say it was not so?

A. No.

Q. Did not I tell you that the company preferred the American Federation of Labor because we wanted to get off the unfair list?

A. That is right.

Q. Didn't I tell you we had been approached by the American Federation of Labor and told we would never get off the unfair list unless they had a contract in that plant? A. That is right.

Q. Didn't I tell you long before or some time before January 1st, 1946 that the O'Keefe and Merritt Company were probably going to have arrangements made with the Pioneer Electric Company?

A. No.

Q. When did I first tell you that?

A. You never did tell me that.

Q. You don't recall my telling you that?

A. No, you never did tell me that.

Q. Are the CIO sympathizers up in the O'Keefe and Merritt [442] Company or the Pioneer Electric Company getting cards signed around there now?

Mr. Tyre: Just a minute. Mr. Reporter, will you read that question?

(The question was read.)

Mr. Nicoson: If the question means within the plant during working hours, I have no objection to

(Testimony of Charles Spallino.)

it. If it means any other place, I think it is immaterial.

Trial Examiner Kent: He may answer.

The Witness: How was that, now?

Q. (By Mr. Collins): Are the CIO members out there trying to get people to join the CIO?

A. Yes, they are.

Q. I suppose they get them during working hours or any other time they can get them, don't they?

A. Oh, they haven't got a chance during working hours.

Q. Do they ever try to get any during working hours? A. No.

Q. Charlie, didn't you ever try to organize anybody during working hours?

A. During working hours?

Q. Yes, during working hours?

A. For the CIO?

Q. For the CIO, yes. A. No.

Q. Didn't you attempt to organize a refrigeration serviceman when you were on a truck with him a few days ago? [443]

A. Did I try to organize him?

Q. Yes, talk to him and argue with him about it?

A. No, I talked to him, telling him what I thought as an American citizen, that the CIO won the election.

Q. I didn't ask you anything about being a citizen.

(Testimony of Charles Spallino.)

A. I am giving you the conversation that I had with the man, if you will let me.

Q. Proceed.

A. I told him that the CIO won the election, and if so, this country is an election country, and that the constitution and by-laws said that that is what we wanted, we got the election, and if we won the election I am going to faithfully do what I voted for.

Q. Did you ask him to join the CIO?

A. I didn't ask him, no, sir.

Q. What were you talking to him about?

Mr. Tyre: I object to that. It has been asked and answered. He just related the entire conversation.

Mr. Collins: Is that all?

The Witness: The reason I had the button on——

Mr. Tyre: Just a minute, Mr. Spallino. Just answer the questions.

Q. (By Mr. Collins): Is that what you told this man all day long?

A. We didn't talk about the union all day long.

Q. Did you at any time ask him to join the CIO?

A. I didn't at any time.

Q. Now, I want to remind you, Mr. Spallino, that you are under oath.

A. That is right.

Q. With the possibility that——

Mr. Nicoson: I object to intimidating the witness.

Mr. Tyre: Counsel knows better than that.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Mr. Spallino, I want to ask you, did you at any time ask anybody to join the CIO during working hours within the factory out there? A. No.

Q. Not anyone at any time. A. No.

Q. Did you or any other member of the CIO ask anybody to join the CIO during working hours?

A. No.

Q. You don't know of any others at all?

A. No.

Q. The only ones who did anything like that is the A. F. of L.? A. That is right.

Q. Did Mr. Despol ever talk to you about this union?

A. Mr. Despol ever talk to me about this union?

Q. Yes.

A. I have had a lot of talks with Mr. Despol since I have [445] been out on the—I don't know what you call it—in the plant.

Q. What are you out on at the plant? You are still working there, aren't you?

A. I would like to relate the story.

Q. Just a moment. Just answer my questions. Are you not making more money now than you did before this election was held?

Mr. Tyre: I object as immaterial and irrelevant.

Q. (By Mr. Collins): Did you ever talk to Mr. Conway about these proceedings?

A. What proceedings?

Q. The proceedings you are here on now.

A. We are here on what?

(Testimony of Charles Spallino.)

Q. Just answer my question. When did you first talk to him?

Mr. Tyre: I object to that, no foundation laid as to talking to him about what.

Trial Examiner Kent: Well, I suppose it is a preliminary question. He may answer.

The Witness: Yes, I talked to him.

Q. (By Mr. Collins): When did you first talk to him?

A. Talked to him at the time we had a little demonstration out there. I thought I had just as much right as Levascos or anyone else talking to him. Everybody seemed to be talking to one another out there. [446]

Q. When did you first talk to Mr. Despol?

A. Around that same time.

Q. Around the first demonstration?

A. Yes, sir.

Q. You never talked to either of those people before there was a demonstration on?

A. Well, actually talk, no, I think it was on the following morning they stopped and I talked to him. There is no harm in talking.

Trial Examiner Kent: What do you mean by a demonstration?

The Witness: Well, they had a little surprise attack there, or whatever you call it. They had the German soldier there and some union demonstration in A. F. of L. and the CIO, they both had their men there, and you couldn't tell who was who by just the buttons.

(Testimony of Charles Spallino.)

Mr. Garrett: Just a moment. May I have that last response read?

Trial Examiner Kent: The reporter will read it.

(The answer was read.)

Mr. Garrett: Thank you.

Q. (By Mr. Collins): Mr. Spallino, did you ever tell me that you were afraid of getting in bad with the CIO if you did make a speech before the Five and Over Club?

A. I didn't put it that way.

Q. Did you ever tell me you were afraid of them?

A. No, I didn't tell you that way.

Q. Did you tell Mr. Levascos you were afraid of them?

A. I didn't say I was afraid of anything.

Q. Did you tell your brother, Joe Spallino, that you were afraid of them? A. No.

Q. Did you tell any of those that you had been threatened by them? A. No.

Q. Were you threatened by them?

A. I didn't say I was afraid, but I didn't want to tell the men——

Q. Just answer my question. Were you afraid of what would happen to you if you spoke against the CIO? A. I wasn't afraid of nothing.

Q. You didn't tell anybody, though, that you were afraid of them. A. No.

Q. When you were working for the Five and Over Club, getting these turkeys and so on around there, did you punch out, punch the time clock out?

A. No.

(Testimony of Charles Spallino.)

Q. When you were organizing for the A. F. of L., you didn't punch out either, did you? A. No.

Mr. Reed: Mr. Examiner, I would like to have the record show in various instances that they had been organizing for the A. F. of L. That is pretty all inclusive, I think, the testimony that is in the record. It should be organizing for one International under the A. F. of L.

Mr. Nicoson: I won't agree that the record indicates any such thing.

Mr. Reed: That last question, I think, is too all inclusive. I think it is an improper question. What is the ruling on this?

Trial Examiner Kent: Read that objection.

(The objection was read.)

Trial Examiner Kent: I think you can clear that up when you question this witness.

Mr. Reed: The record ought to show by the witness' testimony given that he was organizing for a particular International affiliated with the A. F. of L. The question was improper because he was organizing for the A. F. of L., rather than the testimony that he has given, that he was organizing for a particular International under the A. F. of L.

Mr. Nicoson: I don't agree that the testimony indicates any such thing. I stand on the record, that it indicates the opposite. The witness has testified on one occasion he met several A. F. of L. representatives who were together [449] and they said they would go ahead and swing it and, after they won the election, they would divide the spoils, or

(Testimony of Charles Spallino.)

words to that effect, divide them up to suit themselves.

Q. (By Mr. Collins): Mr. Spallino, were you at any time in good faith working for the A. F. of L?

Mr. Nicoson: I object to that as immaterial.

The Witness: In good faith?

Trial Examiner Kent: Wait a minute.

Mr. Garrett: I think that particularly is a conclusion, in good faith. That is assuming a fact not in evidence.

Mr. Nicoson: It certainly does.

Trial Examiner Kent: You may answer.

The Witness: What was the question?

Trial Examiner Kent: If you don't understand the question, you can inquire what he means. That is true of any question. If you don't understand the question, say so.

The Witness: Can I have that question?

Trial Examiner Kent: The reporter will read it.

(The question was read.)

Mr. Tyre: I will object to that, too, on the same grounds.

Trial Examiner Kent: He may answer.

The Witness: Not in good faith, no.

Q. (By Mr. Collins): Not in good faith. When you went back in the service department, back there in the presence of Mr. [450] Bennett and Mr. Doyle, and so on, what was Mr. Bennett doing when you got back there? What was Bennett doing when you went back there?

A. When I went to work there?

(Testimony of Charles Spallino.)

Q. No, when you went back there to get those slips signed up for the A. F. of L.

A. I didn't exactly go all the way through there. I stood by the railing in the aisleway going into the office, and I called Frank Doyle over and Bennett was there, and they took these in to have these signed. I explained it to them without going into the service department at all. I was just on that railing there, not inside of the service department. You know how that is situated there.

Q. Were you outside of the service department on the stock room department there?

A. It was the office department there, where the long railing separates the aisleway from the office.

Q. So there would be a door between you and Mr. Cole's office, would there not?

A. Yes, sir.

Q. Was that door open or closed?

A. Well, I went through and closed the door, naturally.

Q. From where you were standing, could you see Mr. Cole at his desk?

A. Not from where I was standing. [451]

Q. You don't even know whether Cole was in his office at that time or not, do you?

A. I don't recall right now.

Q. In any event, you could not have seen him and he could not have seen you?

A. I could have seen him and he could have seen me by going through.

(Testimony of Charles Spallino.)

Q. That is, by going through, not where you were standing?

A. Not unless he came to the window.

Q. You didn't see him come to the window and look at you?

A. No, I wasn't paying any attention to him.

Q. Mr. Cole is foreman in that department, the refrigeration service department?

A. Well, if you call him the foreman.

Q. Mr. Bennett is the leadman there, he is not a foreman is he?

A. He told me he was shop steward.

Q. Shop steward for the A. F. of L. or CIO?

A. That is what he told me Wednesday or Tuesday, or when was the last day I worked, Tuesday?

Q. He didn't tell you he was foreman, did he?

A. He said he was shop steward.

Q. You didn't start paying your dues, I believe you testified—have you paid dues into the CIO yet?

A. Yes, I am a paid up member. [452]

Q. How long have you been paid up?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Sustain the objection.

Mr. Collins: Sustain it?

Trial Examiner Kent: Yes.

Q. (By Mr. Collins): When did you quit working for the A. F. of L. in their organizing activity out there?

A. When did I quit working for the A. F. of L.?

Q. Yes.

(Testimony of Charles Spallino.)

A. Well, just right on election day, I would say.

Q. On election day? A. Yes.

Q. Prior to election day, were you working for both unions? A. Working for both unions?

Q. Yes.

A. How do you mean working for both unions?

Q. Well, as an under cover agent for one and ostensibly an agent for the other, I am asking you, in whatever capacity, were you working for both organizations?

Mr. Nicoson: Objected to as to the form of the question. Assumes a fact not in evidence.

Q. (By Mr. Collins): Were you working for the CIO prior to the election?

A. I was working for what I thought was right.

Q. Well, just answer my question and we will get along, [453] Charlie. Were you working for the CIO or not prior to the election?

A. I was working for the A. F. of L. until the election, I said.

Q. You didn't do any work at all for the CIO before the election?

A. Not that I can recall.

Q. Did you talk to Mr. Despol and Mr. Conway about it? A. Yes, I talked to them.

Q. Before the election I am talking about.

A. Yes, I talked to them.

Q. Now, as a matter of fact, the reason that you changed you affiliation from the A. F. of L. to the

(Testimony of Charles Spallino.)

CIO was because you got in a fight with your brother, isn't that so? A. No.

Q. Was that one of the contributing factors, was it because Bill O'Keefe would not give you a raise?

A. No, especially after——

Q. Just a minute. I just want an answer to my question, now. Was it because Bill O'Keefe would not give you a raise? A. No.

Q. Was that one of the contributing factors?

A. No.

Q. Was it because you lost your job? Your job as president of the Five and Over Club? [454]

A. No.

Q. You didn't tell anybody that you were burned up about it and had been double crossed by the employees out there because they didn't re-elect you?

A. It is a long story.

Q. Did you ever tell anybody at any time that you had been double crossed by the members of the Five and Over Club because they did not re-elect you?

A. I did say that it was apparently a cooked up deal, and I might explain that it could be seen that that deal, they didn't know anything about this.

Q. Just answer my questions. Have you told one or two people there that you had been double crossed by the members of the Five and Over Club because they didn't re-elect you?

A. I have reason to believe that.

Q. Did you say that?

(Testimony of Charles Spallino.)

A. Yes, and I have a reason to believe that. A very good one, too.

Mr. Nicoson: I think he can explain his reason if he wants to.

Q. (By Mr. Collins): Didn't you also make a remark that the Five and Over Club had accused you of some irregularity in the distribution of the turkeys, claiming that you gave the big turkeys to your friends and the little turkeys to the [455] others?

A. That is out of the question, because your policies of the Five and Over, that is out of the question.

Q. Is that true?

A. No, that didn't have anything to do with it.

Q. You didn't get angry about that?

A. That isn't the reason why I joined the CIO.

Q. Is that one of the things that you were annoyed about out there? A. No.

Q. It is not? A. No.

Q. Was it one of the contributing factors?

A. If you would like to really know the factors——

Q. I am just asking you questions, now, Charlie. I wish you would answer my questions. Your counsel can enlarge upon it.

A. I would like to see my counsel and tell them the whole story why I became a CIO man.

Q. You will have an opportunity, but just answer my questions. Did that have anything to do with it, the turkeys? A. No.

(Testimony of Charles Spallino.)

Q. The fact you lost your job as president of the Five and Over Club, did that have anything to do with it?

A. No, that is out of the question. Those things—— [456]

Q. Those things did make you mad, though, didn't they?

A. It made me mad because it wasn't a square deal and I can prove it wasn't a square affair, apparently, the way it worked.

Q. Well, it was a secret election, wasn't it?

A. Yes, and the particular other part was that fellows that were nominated for president to run against me was the men, that, well, I could say double crossed me, if I may use that expression. About a week before the nominations they that said they would not run and he says you are going to get elected again, because Bill and I, we are going to see that you will, and there the night of the nominations he said he would take the nomination, and he said I am sorry I changed my mind, I am going to run for president, and he is sitting right here, Bill Wheeler, that is the fellow there. You know if you have the money in your hand, and I haven't got any money. I wish I could really explain the whole story so you would get the whole story.

Q. Go ahead and tell your story, Charlie. I am not stopping you.

A. You are the questioner over there. I never sat up here before. I am not used to this. I am used to working at a bench, not in a court room.

(Testimony of Charles Spallino.)

Q. I will get back to my original question. You were angry because you were not re-elected president of the Five and Over [457] Club?

Mr. Tyre: I object to that question as having been asked and answered.

The Witness: Under the circumstances, I was.

Mr. Tyre: Just a second, now.

Trial Examiner Kent: I sustain the objection. I think that answer has been taken.

Q. (By Mr. Collins): I believe you testified when you were in Mr. O'Keefe's Senior's office and had a conversation with him regarding this speech that was to be made at the Five and Over Club, I think you testified that he looked it over and began to dictate and told you he was going to make a speech.

A. That is right.

Q. As far as he was concerned, he didn't want you to make speeches on the controversy at the Five and Over Club, is that true?

A. That was not a speech. That was a leaflet that was supposed to be.

Q. As far as that was concerned, he didn't want you to put out any leaflets that would put the company into cooperation with the Five and Over Club?

Mr. Tyre: I will object to that as calling for a conclusion of the witness. If he wants to ask you what Mr. O'Keefe said, I will have no objection.

Trial Examiner Kent: Read the Question, please.

Mr. Collins: There is no question. It is just a preliminary. I will withdraw the question and re-frame it. No use our getting into a colloquy here.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Do you recall coming to Mr. O'Keefe's office with a leaflet or something that you were going to put out on behalf of the Five and Over Club?

Mr. Nicolson: Object to that. It seems to me that if that is going to be talked about, it ought to be put in evidence, and I submit it is not in evidence.

Mr. Collins: I will withdraw and reframe the question.

Q. (By Mr. Collins): Do you remember coming into Mr. O'Keefe's office concerning a leaflet?

A. Yes.

Q. Do you remember that Mr. O'Keefe told you in substance that he didn't want you to put out any leaflets on behalf of the company through the Five and Over Club, O'Keefe did not want you to put that leaflet out, in other words, isn't that so?

Mr. Tyre: Just a minute. I will object to that. That calls for a conclusion. The witness has testified and stated what Mr. O'Keefe said.

Mr. Nicolson: I join in the objection, with the later objection, I didn't make objection to it before, but I do now.

Mr. Collins: Mr. Trial Examiner, if we are going to have [459] strict rules of evidence, then I say we ought not to have them only when I examine. I submit that we have been here two and a half days without any rules of evidence, and now we seem to be getting back to them again.

Trial Examiner Kent: Read the question, Mr. Reporter.

(Testimony of Charles Spallino.)

(The question was read.)

Trial Examiner Kent: He may answer.

Mr. Nicoson: That last part is the part I objected to.

Trial Examiner Kent: Read that last part to me, again.

(The question was re-read.)

Mr. Nicoson: The first part I don't object to.

Trial Examiner Kent: Reframe the question. Of course, you have a double-barrel question there.

Q. (By Mr. Collins): I have got you in Mr. O'Keefe's office concerning a leaflet.

A. Yes, sir.

Q. That is where we are now. Did Mr. O'Keefe tell you that he did not want you to put out that leaflet on his behalf, or words to that effect?

A. Well, after he went over it, he said that he would make a speech instead.

Q. Did he tell you——

A. That I didn't have to do it.

Q. Did he tell you couldn't do it? He didn't tell you you couldn't do it, did he? [460]

A. Well, he says——

Q. Just answer my question, Charlie, instead of attempting to evade it. Did he or did he not tell you you could not put it out?

Mr. Nicoson: I object to this characterization of an attempt to evade. I think that is unfair in counsel, trying to read into the record that the witness is attempting to evade. I submit he is a very willing witness and he is trying awfully hard to answer a

(Testimony of Charles Spallino.)

lot of ambiguous questions that are put to him. I object to that characterization.

Mr. Tyre: Is there a ruling, Mr. Examiner?

Trial Examiner Kent: I think it might be well to avoid personal comments with the witness. [461]

Mr. Collins: Is there a question before the witness that has not been answered?

Trial Examiner Kent: I think there was a question. Read the question to the witness.

(The question was read.)

A. No, he didn't say exactly that. I could not put it out.

Q. (By Mr. Collins): He merely told you that he was going to make a speech, that is what it comes to. A. Yes.

Q. And he didn't tell you to go out and threaten anybody into the A. F. of L. Union, did he?

A. No, not directly he didn't. He said—

Q. Just a minute. Answer my questions. Did he tell you if anybody didn't join the A. F. of L. Union they would get fired or discriminated against? A. No, he didn't say that.

Q. As a matter of fact, he didn't say anything to you that he did not say in his speeches, did he?

A. I don't think he did.

Q. He just said the same in the public speech that he said to you. A. That is right.

Q. Did you go out and threaten people with discharge or discriminatory action if they did not sign up with the A. F. of L. [462]

A. I did not.

(Testimony of Charles Spallino.)

Q. You didn't frighten anybody, all you did was just ask them to join? A. That is right.

Q. As a matter of fact, you told them that they could join the A. F. of L. and then vote for anyone they wanted to? A. That is right.

Q. Nobody at any time ever received any word from you that they would be coerced or restrained in any fashion whatsoever?

A. How is that? I can't understand those words.

Q. I will withdraw the question. I think you made a statement yesterday that you had a conversation with Mr. McMurray.

A. He is not here this morning.

Q. Do you recall what is the date of that conversation? A. The date with Mr. McMurray?

Q. Yes, your conversation with Mr. McMurray.

A. Not the date.

Q. Can you approximate the date?

A. It was soon after meeting Roberts.

Q. And what was the date of your meeting with Roberts, approximately?

A. Well, it was within two or three months prior to the election or before the election.

Q. Two or three months before the election?

A. Very near that. [463]

Q. I believe you testified, did you not, to a meeting in my office when there were a large group of A. F. of L. representatives there? Can you approximate the date of that meeting? That was also prior to the election, was it not?

A. Yes, that was.

(Testimony of Charles Spallino.)

Q. Did I tell you or did I state in your presence that those representatives of the A. F. of L. had approached me and demanded the right to bargain for their members in the O'Keefe and Merritt factory? A. How was that, demanded?

Q. Did I state to you or state in your presence words to the effect that these representatives of the A. F. of L. had come to my office as a representative of the company and requested the right to bargain for their members in the factory?

A. Well, it was sort of a social affair there. I was introduced right and left, and then we discussed a lot of angles which we——

Q. Charley, what I want to know of you, did you hear me at any time say that those people had requested the right to represent the employees of the O'Keefe and Merritt Company, at that meeting?

A. Well, not exactly that way.

Q. Well, if not in those words, did I use words to that general effect, that those men were demanding the right? [464]

A. Well, they represent different locals of the union.

Q. You don't know what happened, Mr. Spallino——

Mr. Tyre: Pardon me. Will you read back that answer? I didn't hear it.

(The answer was read.)

Q. (By Mr. Collins): Did you hear any of them tell me that he represented employees among the electrical workers? A. I think there was.

(Testimony of Charles Spallino.)

Q. Did you hear them tell me that they represented employees in the foundry? A. Yes.

Q. And among the painters? A. Yes.

Q. And you also heard them say that they represented the machinists. A. The machinists.

Q. And various construction workers such as carpenters? A. Yes.

Q. And now, again referring to this leaflet that you took into Mr. O'Keefe's office and which you, I believe, testified was never used, wasn't it the custom for me as a member of the Five and Over Club to assist the members from time to time in the preparation of their by-laws, their articles of incorporation, and the various other legal aspects of the club? [465]

A. Well, I don't know. If I remember right, you have been pretty busy at times, and I don't know whether you have ever been called, that is, on my part.

Q. You knew that I drew them up originally, did you not?

A. Yes, you made the original by-laws.

Q. And you know that I have been called upon from time to time to interpret those by-laws, do you not, for the members of the club?

A. Not since I was president, you didn't.

Q. It was the general practice on occasions when you were an officer, the practice was for me to prepare leaflets and supervise various official documents that were to be used by the club?

A. I don't know the whole story.

(Testimony of Charles Spallino.)

Q. Have there been other occasions when I have assisted you or other officers of the club in the preparation of various documents, speeches, or anything of the public nature in the operation of our club?

A. I don't think so while I was in office.

Q. Do you know of any occasion when you were not in office when I assisted the other officers?

A. Well, I think you probably assisted Bill Cole.

Q. You are getting into party politics now again. He is my brother-in-law. Did you hear Mr. O'Keefe talk to you, did you hear Mr. O'Keefe state at any time that he didn't think much [466] of either one of the unions?

A. Yes, he has made that.

Q. And that he thought that the lesser of the two evils was the A. F. of L., did he say that?

A. Yes.

Q. He said he thought he might be able to get something out of the A. F. of L. if he joined with the A. F. of L., isn't that true?

A. Yes.

Q. To wit, getting off the unfair list?

A. Yes.

Q. What was the answer?

A. I said "yes."

Q. I want to get this very clear in my mind and in the record, Mr. Spallino. There is nothing to keep any member of the Five and Over Club from demanding the right to get up and express his opinion, is there?

A. Well, it all depends on what his opinion is, yes. [467]

(Testimony of Charles Spallino.)

Q. Well, what sort of opinions would you stop a man, as an officer of the club, what sort of opinion would you stop a man from delivering?

A. Well, we would stop anyone who has any opinion according to the conditions in the plant, because everyone would be trying to talk about conditions in the plant.

Q. You mean that was because everyone would try to stand up and make their speech at those meetings?

A. I don't limit them. They just don't talk.

Q. If a man wants to talk about the work he could talk, couldn't he?

A. Once in awhile there has been talk about it, they would get up and talk, and he has always gotten it.

Q. They are still working there, aren't they?

A. They are still working there, so am I working there, but you ought to see the conditions that I am working under.

Q. What conditions are you working under?

A. I have to ask my foremen and the other men to go to the lavatory.

Q. Just a minute.

Mr. Nicoson: Just a minute. The question was asked and I think the witness should be given an opportunity to answer fully.

The Witness: When I came back from the hearing they gave me strict orders whenever we want to leave the department in [468] O'Keefe and Merritt or Pioneer to go to the lavatory, because they

(Testimony of Charles Spallino.)

don't have any lavatory in O'Keefe and Merritt, I have to get permission from the men who have worked there, I had to go to the shop steward and last time he says, "How many times do you go?" and then he took out his watch and he would look at his watch and say, "How many times are you going to go," and then the head man Cole, your brother-in-law there, they ask a fellow how long is he gone and where is he gone.

Q. Are you through with this statement now?

A. Well, I could continue until tomorrow.

Q. Will you please tell the court and myself when you have had an occasion to work since this hearing started. Have you been to work since this started? A. I had two days this week of work.

Q. What are you talking about? The case started Wednesday.

A. I worked Monday and Tuesday. Monday, in facts, I got a bawling out Monday from the Pioneer when I am working for O'Keefe and Merritt.

Q. How many days were you off last week?

A. Last week?

Q. Last week. You said you worked two days.

A. I said this week I worked two days, Monday and Tuesday, and since I came to the hearing, after I came to the hearing I was bawled out by the Pioneer Electric where I am supposed to work for O'Keefe and Merritt. I don't quite get it. [469]

Q. Now, Mr. Spallino——

A. May I continue?

(Testimony of Charles Spallino.)

Mr. Nicoson: I submit he should be given an opportunity to answer the question asked.

Mr. Collins: No, the question has been answered fully. I was asking the man what days he was off right now, and if he is going on and saying a lot more, I would like to have them answer to the question.

Mr. Nicoson: You asked him the conditions he is now working under.

Mr. Collins: The conditions under which he is now working, he has stated that, and this is another matter, counsel.

The Witness: May I get down to the last day—

Mr. Collins: Just a moment, please. Mr. Trial Examiner, would you instruct the witness to answer my questions and not get off on these long winded answers, because I want to get through with this examination.

Trial Examiner Kent: Try to answer the questions briefly and concisely. Of course it is true of all witnesses, if you don't think a brief sort of answer, yes or no, would be the proper answer to a question, you may amplify, but don't feel under any obligation to amplify it.

The Witness: Your Honor, he asked for the answer.

Q. (By Mr. Collins): Mr. Spallino, the question I want answered from you is, "Is it possible for an employee to get up [470] on the floor at the Five and Over Club and make a speech if he wants to do it? A. Sure it is.

(Testimony of Charles Spallino.)

Q. And they permit him to do it, do they not?

A. That is right.

Q. Do the foremen attend the meetings of the Five and Over Club? A. Yes.

Q. They are members of the Five and Over Club as a matter of fact, are they not?

A. Well, at present they are all officers.

Q. Mr. Spallino, will you please just answer my questions now and not volunteer all these alleged witticisms of yours, and we will get through with this thing.

Mr. Nicoson: I object to that criticism of the witness.

Mr. Collins: I will ask you to make an effort to answer and not to keep throwing these extra things into my questions. Mr. Trial Examiner, will you instruct this witness to answer my questions and not volunteer a lot of things. I would like to get through with this thing.

Trial Examiner Kent: Read the question and the answer.

(Question and answer read.)

Mr. Collins: I move that the part that they are all officers be stricken upon the ground it is not responsive.

Trial Examiner Kent: No, I think it is generally [471] responsive.

Mr. Collins: Mr. Trial Examiner, I submit I asked him whether the foremen attended the meetings. The answer would be yes or no. Anything about them being officers or being married men or

(Testimony of Charles Spallino.)

members of some church or club is absolutely extraneous and not responsive to my question. This witness is full of that kind of answers, and I want him to be instructed to answer my questions, and it will shorten the proceeding. It will undoubtedly take some of the amusement out of this proceeding, but it will certainly shorten it.

Mr. Tyre: I think it is incumbent upon counsel, if the Examiner please, to accept the entire answer if the question demanded the answer which he receives.

Mr. Collins: That is true if the answer is responsive. I merely want this man to make responsive answers to my questions. I asked him whether the foremen attended, and he is going into their marital status and political status and that is certainly not——

Trial Examiner Kent: As far as I see the answer, it is responsive. I do think that the witness should pay attention to the question and answer it briefly and concisely as you can. Now, if you think it is necessary to amplify the answer, why you may do that, in order to give a full and complete answer, but don't take that as a hint that you should do that to every question. [472]

Q. (By Mr. Collins): Referring to the Five and Over Club meeting held, I believe it was the day before the election, were any foremen present at that meeting that you saw?

A. You mean the Five and Over meeting before the election?

(Testimony of Charles Spallino.)

Q. Yes, wherein Mr. Levascos made some sort of a speech. A. Oh, yes, they were all there.

Q. They were there. Was I there?

A. I don't think I saw you there.

Q. The Five and Over Club has on other occasions had meetings at 4:30, has it not?

A. Well, on special occasions.

Q. They have had them before, they have had their meetings at 4:30 in the afternoon, is that true? A. On special occasions, yes.

Q. Now, I have heard you in your testimony here frequently say that Mr. Levascos was doing this or Mr. Levascos was doing that during working hours. Do you know of your own knowledge, Mr. Spallino, and I don't mean anything you are going to guess at, do you know of your own knowledge whether or not Mr. Levascos had punched out and was or was not being paid during that time?

Mr. Nicoson: I object to the form of the question, and also the inference that the witness is going to guess at anything. I submit, your Honor, that it is a perfectly improper question, and arguing with the witness, and done only for the [473] purpose of trying to create a false impression in this record of the witness and his answers. I appeal to you to admonish counsel to frame his questions properly, because I am quite satisfied he is capable of doing it.

Trial Examiner Kent: Read that question, Mr. Reporter.

Mr. Collins: I will withdraw the question in the interest of time.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Mr. Spallino, do you know of your own knowledge whether or not Mr. Levascos had punched out during any of the times that you said that he was doing work on behalf of the A. F. of L. in the factory?

A. I never did see him punch out.

Q. You don't know that he did not punch out?

A. Well, I don't know that he did not punch out.

Q. You don't know whether he was getting paid for the time or not, do you?

A. I couldn't know.

Q. In connection with those meetings which you attended in my office, wherein there were certain C.I.O. officials present—I mean A. F. of L. officials present, did you ever ask Mr. Despol or Mr. Conway or any of the C.I.O. officials why they did not come out and talk to me also like the A. F. of L. was?

Mr. Nicoson: Objected to as immaterial.

Mr. Tyre: And also argumentative. [474]

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Did you ever ask the C.I.O. officials to come and talk to me?

Mr. Nicoson: Same objection.

Trial Examiner Kent: Objection sustained. I can't see the materiality going to meet any of the issues.

Mr. Collins: I don't like to argue with the rulings of the Trial Examiner, Mr. Trial Examiner, but the materiality of it would be that as I see it

(Testimony of Charles Spallino.)

the company would have to treat them both the same. If one of them sat down with me and we spoke and then the other came out and asked the same, the other side could not claim it was unfair merely because they hadn't done likewise. I would be the only one they would call on. It is my job out there to handle these labor matters, as far as you know, isn't it, Mr. Spallino? A. Yes.

Q. (By Mr. Collins): So if the union officials called on anyone they would call on me?

A. As far as I know.

Q. Did you ever come up to my office with either Mr. Despol or Mr. Conway? A. No.

Q. Do you know whether Mr. Conway or Mr. Despol ever came up to my office?

A. Yes, I have known that they have, through hearsay. [475]

Q. Did they ask anybody to come up with them?

A. No.

Q. Did you know that I asked Mr. Conway and Mr. Despol to bring their committee and come up and talk to me?

A. At the election I heard that you did have a few meetings together.

Q. Did you also hear that I asked them to bring their committee and to come up there?

A. I think there was a certain sort of a literature ruling on that, that any of us could, any C.I.O. member could attend.

Q. Do you know whether or not any of them came up? A. No, I don't.

(Testimony of Charles Spallino.)

Q. Didn't Mr. O'Keefe state in one of his speeches that the employees could join any union they wanted to?

Mr. Nicoson: Just a moment. Ordinarily I would not object to that, but since we have the arrangement for putting in the speeches here, which are reduced to writing, I think at the moment it is not a proper time to put the question to the witness, because that is a thing on which there is no evidence here, and I purposely refrained from going into the matter.

Mr. Collins: I will withdraw the question, Mr. Nicoson, and I intend to submit the speeches.

Q. (By Mr. Collins): Didn't I tell you at one of those [476] meetings that the company had no legal right to force anyone into any union than their own choice?

A. That is right. They don't.

Q. And I told you that, didn't I?

A. Yes.

Q. And didn't I tell you we could not discharge or discriminate against anyone for his union activities legally?

A. Not legally. Now, you see I have to get into a story there.

Q. Just a minute. Just answer my question. Don't answer with any stories. I did tell you that, didn't I?

A. That is right, not legally.

Q. Did I ever ask you to meet with me and any C.I.O. officials?

A. No.

Q. You thought it was grossly unfair for me to meet with the A. F. of L., I take it by your testimony, is that true?

(Testimony of Charles Spallino.)

Mr. Nicoson: I object to what he thought. It is immaterial, calling for a conclusion of the witness.

Mr. Tyre: I join in that.

Trial Examiner: He may answer. You can answer.

The Witness: Could I have the question?

(Question read.)

The Witness: That is right.

Q. (By Mr. Collins): Did you ever do anything about having [477] me meet with the C.I.O.?

A. I know that was impossible.

Q. Just answer my question, Mr. Spallino. Did you try to get me to meet with the C.I.O.?

A. No.

Q. You said you knew it was impossible. Did I hear you say you knew it was impossible for me to meet with the C.I.O.?

A. That I could get you to meet with the C.I.O.

Q. Didn't the C.I.O. meet with me?

A. Well, they did so on their own after the election.

Q. Couldn't you have asked them to come up?

A. I didn't even know them that well. I have really got acquainted with them lately.

Q. Did Mr. Conway or Mr. Despol ever tell you in words that they did not want the employees to attend the meetings in my office? Did you hear that Mr. Conway and Mr. Despol did not want the employees of O'Keefe and Merritt factory to come to my office for those meetings?

(Testimony of Charles Spallino.)

A. No, unless when they met outside. I missed a few of those speeches.

Q. Don't you know as a matter of fact that I had three employees, different employees every time I met with the C.I.O. officials?

A. I don't know that.

Q. And the first time you ever heard about that?

A. The first and only time I heard about any meetings is after the election when John Despol and his committee came down to negotiate with you.

Q. Did Mr. Conway or Mr. Despol ever tell you that they did not want any of the Teamsters in their union?

A. Well, he did say something that day out there, when there were the demonstration out there, that the Teamsters and the C.I.O. got along swell because the Teamsters is all under the A. F. of L.

Q. And they stated they did not want them in their bargaining unit, isn't that true?

Mr. Tyre: Just a moment. I am going to object to this, your Honor. I think that this is improper cross-examination.

Mr. Nicoson: I think it is getting a little confused.

Mr. Collins: I think it is most proper cross-examination and very pertinent.

Mr. Tyre: Not to go into it with this witness, your Honor. Mr. Conway and Mr. Despol are in the courtroom, are present and to be examined by Mr. Collins if he desires. This witness was not examined upon that particular subject.

(Testimony of Charles Spallino.)

Mr. Collins: I would like to ask you to read that question, Mr. Reporter.

(Question read.)

Trial Examiner Kent: I will take the answer.

Mr. Nicoson: I submit that calls for a conclusion. If [479] he is asked if Despol told him that, I don't have any objection to that.

Trial Examiner Kent: Read the question again.

(Question re-read.)

Mr. Collins: I will reframe my question, Mr. Trial Examiner.

Q. (By Mr. Collins): Did Mr. Conway or Mr. Despol ever tell you that they did not want the Teamsters in their union, or words to that effect?

Mr. Tyre: Same objection.

Trial Examiner Kent: You may answer.

A. Well, all I have heard John Despol say about the Teamsters, that he didn't care if they were A. F. of L., because they naturally would go A. F. of L. anyway, because all Teamsters belong to the A. F. of L.

Q. Did he tell you that before you went out there in the morning that you have testified to and arranged for this meeting with Mr. Blaney of the Teamsters, or did he tell you that after that?

A. The only time I talked to him was at the demonstration, like I said.

Q. Was that before or after?

A. He asked me a lot of questions. There were two or three days together there. I don't remember that one.

(Testimony of Charles Spallino.)

Q. Was that before or after the election you talked to Mr. Despol? [480]

Mr. Tyre: Your Honor, I wonder if we can have the record show that my objection goes to this entire line of cross-examination as to conversations with Mr. Despol.

Trial Examiner Kent: Yes, the record may show that.

Q. (By Mr. Collins): I will repeat the question. Was this conversation that you had with Mr. Blaney before or after the election?

A. It was before.

Q. Before the election, did Mr. Despol tell you that he did not want these Teamsters then before or after this conversation that you first had with Mr. Blaney?

A. After the election.

Q. Now, did Mr. Despol tell you that he did not want any members of this factory out there except the Stove Mounters?

A. No, he didn't say that.

Q. Did he ever tell you that he would be willing to accept just the Stove Mounters and let the A. F. of L. have all the rest of the employees in the factory?

A. No.

Q. He never told you that?

A. No.

Q. Was this newspaper that is printed by the Five and Over Club, was that printed outside of the factory or is that mimeographed in the factory?

A. Well, that is outside the factory. [481]

Q. So that there were certain things that were printed outside the factory in addition to this one

(Testimony of Charles Spallino.)

little handbill that you were talking about in my office, is that true?

A. Well, the president of the Five and Over hasn't had anything to do with the paper for—in fact, it has been in the hands of one person all the time.

Q. When you were referring to this little meeting in my office, did I tell you to see Mr. O'Keefe or did you suggest that you better talk to Mr. O'Keefe before you published anything concerning the personnel problems in the factory?

A. You suggested that it would be a good idea to let Mr. O'Keefe see that.

Q. This was in the nature of a meeting between members of the Five and Over Club, and this is in my office. There was nobody in that office who was not a member of the Five and Over Club?

Mr. Nicoson: I object to that characterization. It calls for a conclusion. The facts speak for themselves.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): There was no one in my office that was not a member of the Five and Over Club, was there? A. No.

Q. As I recall, Mr. Spallino, we asked you if I made a speech, and you answered yes I made a speech. I am going to ask you at the time that I made that speech, was at the time [482] while the C.I.O. was holding this surprise attack or demonstration that you have referred to?

A. No, they had, they had the PA system outside too. That was, I believe, if I am correct, I was in

(Testimony of Charles Spallino.)

the lunch stand at that time and unfortunately didn't get to either one.

Q. You didn't hear my speech?

A. I don't recall. I know I missed one or two of the speeches out in front. At the moment I can't place which one that I missed. I know I missed two speeches at the front, or one.

Q. Well, the C.I.O. had had a demonstration on the previous day at the factory at the time the employees were going to work, had they not?

A. I don't remember.

Q. There was one speech the following morning, was there not?

A. I don't know when the speeches was. I don't recall just what speeches it was.

Q. You know that there had been a demonstration before I made this announcement?

A. I can't remember whether the demonstration was before you made that speech.

Q. In connection with the activities of this Five and Over Club, Mr. Spallino, do you recall anything at any time, whether it was a dance or a football game or a baseball game [483] or a beer bust or anything of any kind that the supervisors or any boss of the factory stopped you fellows from doing?

A. No.

Q. Never in the history of the organization did anything like that ever happen?

A. No.

Q. So there was not any influence exerted on you by those foremen who were members of the Five and Over Club?

(Testimony of Charles Spallino.)

Mr. Tyre: Object to that as calling for a conclusion.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Did the foremen themselves ever get up and state that they would take any sort of disciplinary action if certain things were or were not done in the operation of your club activities?

A. No, they never did use that term.

Mr. Collins: That is all.

Trial Examiner Kent: Let's take a recess for five minutes.

(Short recess.)

Trial Examiner Kent: You might proceed, Mr. Garrett, Mr. Reed or Mr. Smith.

Mr. Collins: Mr. Trial Examiner——

Trial Examiner Kent: Are you through?

Mr. Collins: Yes, I am all through, but may I make a statement before we conclude with this witness. I would like [484] to have it for the purpose of the record. In the heat of some of the cross-examination of this witness and various objections being interposed by counsel, I may have made a statement in the record which is not complete enough, and at this time I want to point out the reason for certain questions I asked so that the record may be entirely clear on this point. The record has got some statement by him to the effect that he doesn't know whether he has a job or not. I want to point out that on the other hand it is true that the motors this man has been working on

(Testimony of Charles Spallino.)

have been subcontracted to some other concern, with the employees in the motor department taken over intact into the job, as I understand it, with this subcontractor. As I understand it, this witness will have the opportunity of either going to work at a better job with the subcontractor or he will have an opportunity to go back to work with O'Keefe and Merritt or the Pioneer Electric Company at some job that he can do, based upon his statements here today, and that was the purpose of that question, and if there is any doubt about it at this time, I wish the Trial Examiner would let me know, so that I may continue to ask this witness questions concerning his availability for other work.

Trial Examiner Kent: There are no allegations in the complaint pertaining to discrimination in regard to hire or tenure, which is what I thought the line was looking to, so [485] there would not be any materiality.

Mr. Collins: I might have anticipated future trouble, but I wanted to be sure I know what the witness can do so I know what to offer him.

Mr. Smith: Mr. Examiner, I would like to call your attention to the fact that next week Mr. Schullman and myself have trials on, coming up during this hearing. We are going to ask Mr. Garrett to keep track of that, as he is here, and try to give us as much information as possible, if neither of us can get back Monday.

Secondly, a few of us here, I don't know whether the majority or not, would like the proceedings to

(Testimony of Charles Spallino.)

be terminated at 4:30 today, and I wonder if the Examiner would canvass the attorneys to find out whether or not 4:30 or 5:00 o'clock is preferable with the attorneys present.

Trial Examiner Kent: What was that last?

Mr. Smith: Some of the attorneys would very much prefer that the proceeding terminate today at 4:30.

Mr. Collins: That is agreeable to me.

Mr. Smith: I wonder if the Examiner would see if the majority so desire, whether they all want to adjourn at 4:30.

Trial Examiner Kent: I thought we were going to go until 5:00. I thought I allowed you the half hour.

Mr. Garrett: It is highly desirable to me, if it can be arranged with the consent of the Examiner and of course the [486] agreement of all the parties, to be relieved at 4:30 today, because on this particular day we have that little ceremony that Uncle Sam requires of us once a year, that is, filing the income tax return, and I have an appointment with my accountant in my office, and could very well use the time. This is March the 15th, that fatal day.

Trial Examiner Kent: Well, assuming then we quit at 4:30, can you gentlemen be here at 9:30 Monday morning?

Mr. Garrett: It has got to be a quid pro quo, I can see that.

Trial Examiner Kent: How?

(Testimony of Charles Spallino.)

Mr. Garrett: It has got to be a quid pro quo. I suppose the other attorneys and the witness would be agreeable to take a half hour off on Monday morning in order to give us a half hour this afternoon.

Mr. Collins: That is agreeable with me.

Mr. Smith: Is it agreeable with you, Mr. Nicoson?

Mr. Nicoson: 9:30 Monday?

Mr. Smith: Yes, sir.

Mr. Nicoson: Yes, that is all right with me.

Trial Examiner Kent: You see, you are not giving me a half an hour Monday morning. We really ought to start at 9:30. I think the record shows possibly not as clearly as it should, I realize there are a number of attorneys, and Los Angeles is a fairly large city, and attorneys do have [487] to find some time to contact their clients during business hours, and that representation was made to me, so I did shorten the hearing time somewhat, which means prolonging the hearing by days. I think if we start in at 9:30 then Monday morning I will consent to adjourn this afternoon at 4:30.

Q. (By Mr. Garrett): Mr. Spallino, what was the nature of the injury you received that you testified about?

A. Injury to my body do you mean?

Q. Yes, I mean the injury to your body.

A. The time I had my accident?

Q. You had an accident, did you? A. Yes.

Q. Was that an accident that happened to you while you were on the job? A. Yes.

(Testimony of Charles Spallino.)

Q. And about how long ago was that?

A. Around about 1940—no, it wasn't that long, about three or four, yes, around three or four years ago.

Q. About three or four years ago?

A. Yes.

Q. Can you establish the time any more closely than that?

A. Not offhand. I have been thinking about it.

Q. But it is an injury which preceded the interview you had with Mr. Collins, at which your brother was present and on which you testified, is that correct? [488]

A. That was quite a while back, yes.

Q. And at the time you had this interview you have testified to with Mr. Collins where your brother was present, you were already suffering from that injury, is that correct?

Mr. Nicoson: Object to that. There is no evidence here that he was suffering from that injury at that time. It assumes a fact not in evidence.

Mr. Garrett: All right, I will reframe the question, Mr. Nicoson.

Q. (By Mr. Garrett): Your injury, then, was before your conversation with Mr. Collins where your brother was present that you testified about, because you talked about your injury at that meeting, did you not?

A. Yes, I did talk about my injury at that meeting.

(Testimony of Charles Spallino.)

Q. Your injury was one of the things you talked about at that meeting?

A. Well, it was not exactly the injury. It was the settlement that I had not received when it was supposed to be, and the answers that the doctor gave me, that my claim was in and it was not in.

Q. And the claim was about the injury you suffered? A. About that injury, yes.

Q. That was an injury you suffered while you were on the job, is that correct?

A. That is correct. [489]

Q. It was an injury to your arm, I think you said? A. To my arm.

Q. And as a matter of fact that arm never has been as good since the injury as it was before, I think you said, is that right?

A. That is right.

Q. Now, you can't remember the exact time of the injury, except that it was before this conversation with Collins and Joe Spallino, is that correct?

A. Yes.

Q. And at that time your injury had progressed to the point where you were entitled to a rating on the disability, is that right?

A. That is correct.

Q. And this report you are talking about the doctor sending up to San Francisco was a report on the permanent disability rating, is that correct?

A. That is right.

Q. Did you get a permanent disability rating?

(Testimony of Charles Spallino.)

A. Well, after I went to the Board myself and after a length of time, I was called by the Examiner at the hall, or the Commissioner's office.

Q. You went up there and were examined by the doctor there, is that correct?

A. Yes, that is correct. [490]

Q. And thereafter you got a permanent disability rating, is that correct?

A. After that I did.

Q. When you went up and saw the doctor at the Industrial Accident Commission, was that before or after this conversation you had with Collins and Joe Spallino that you have testified about?

A. I had already gone to the——

Q. Now, in connection with that permanent disability rating that you got, did you file any papers at the Industrial Accident Commission?

A. Yes, I did.

Q. Were they the white paper, which is an application for adjustment of claim, or the blue papers, which are an application for an informal permanent disability rating, do you remember?

A. The blue.

Q. You filed the blue papers? A. Yes, sir.

Q. Can you recall whether you ever signed and filed with the Industrial Accident Commission any papers except the blue papers in connection with that injury?

Mr. Tyre: I am going to object to this line of questioning.

(Testimony of Charles Spallino.)

Mr. Nicoson: I didn't ask the witness about that. [491]

Mr. Garrett: I have no hesitancy in telling the Trial Examiner why I am asking these questions. It is because from some of these conversations testified to I deem it desirable from the standpoint of my case to have a fixed point in time on account of related circumstances, and these questions are asked the witness so as to enable me from the records of the Industrial Accident Commission to fix the exact time of the interview that he testified to, which cannot be fixed by the witness himself.

Trial Examiner Kent: I don't see how it helps to fix the exact time. You found it was some date subsequent to the time he filed his papers.

Mr. Garrett: You recall, if your Honor please, that the witness has so far testified variously that the time of this interview was about two years, or first he testified that it was two years ago from the time that he sat on the stand and testified, and then he also testified contradictorily that it was approximately at the start of our participation in the war, and in that connection he mentioned Pearl Harbor. I believe that a variance of two years on an interview under the evidence in this case is too wide a variation. It was either two years ago or it was four years ago. From the testimony of this witness the exact date cannot be ascertained. I think I have a right to inquire so that I can establish by the existence of related documents bearing the seal of [492] the State of California and their filing dates. I be-

(Testimony of Charles Spallino.)

lieve I have a right to establish it with relation to those authentic records.

Trial Examiner Kent: Well, for that purpose, it being cross-examination, I think counsel is probably within his rights. You may inquire.

Mr. Garrett: I will rephrase the question. I think it is hard for the reporter to find.

Q. (By Mr. Garrett): Can you remember whether in connection with that injury and the permanent disability rating you got ready there for signature and filed any papers with the Industrial Accident Commission except these blue papers??

A. The blue papers is all I remember.

Q. They are all you remember, is that correct?

A. Yes.

Q. Now, with respect to your services with the O'Keefe and Merritt Company, I think you testified that you went to work for them 19 years ago.

A. Well, it is almost 19 years, not quite.

Q. At that time was Mr. Cecil Collins employed by them? A. Yes, he was. [493]

Q. What kind of work did you do when you first went to work for them?

A. Well, the first job I had, when we were building, and I was fresh off a construction job and I was on construction.

Q. What was Mr. Cecil Collins doing for them then?

A. I don't think he was a lawyer at that time, and I don't remember what he was doing. I know

(Testimony of Charles Spallino.)

he was a refrigeration man. I believe maybe at that time he was working in the refrigeration department.

Q. He was a refrigeration serviceman; was he not?

A. I believe that is what he was.

Q. Is that approximately the general nature of the duties he was doing?

A. I know he did that. I don't know whether he was doing that at that time, but I know he was a serviceman.

Q. Now, this first conversation that you testified to, that was the one where your compensation claim was mentioned, that is, the claim for your injury, had you at that time signed an application for membership in the C.I.O union? A. No.

Q. It was after that conversation that you signed an application for C.I.O. membership, is that correct? A. Yes.

Q. And where did you sign that application for C.I.O. membership? [494]

Mr. Nicoson: Objected to as immaterial. I will withdraw the objection.

Trial Examiner Kent: You may answer.

The Witness: How was that now? Where?

Q. (By Mr. Garrett): Where did you sign it?

A. Where?

Q. Yes.

A. Well, it was just cards that were issued at that time in pamphlets. I signed one.

(Testimony of Charles Spallino.)

Q. Where were you when you signed up on it?
Where were you when you signed up one?

A. I signed that up at home and mailed it.

Q. At your home. How long was that after this conversation in Collins' office where you talked about your compensation question?

A. I don't remember.

Q. Can you approximate it?

A. Oh, it might have been a couple of months or so afterwards.

Q. Was your compensation claim settled at that time?

A. No, not yet, that I can remember.

Q. Did you thereafter, after signing that application in the C.I.O., did you have any contact with the C.I.O. after you mailed in that application?

A. No.

Q. You mailed it in to them, did you? You received it at [495] your home? Did you receive the application in the mail? A. No.

Q. Somebody brought it to you, some representative?

A. It was handed out as we left the employment.

Q. Now, I think you testified that the Five and Over Club was organized in about 1935?

A. That is right.

Q. How many charter members did you have then?

Mr. Nicoson: Objected to as immaterial.

The Witness: I don't remember.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Well, the record may remain.

Q. (By Mr. Garrett): You can't recall?

A. I remember one picture that was taken very soon after, I think probably that same year, there were 116 members in this picture, a group picture that was taken.

Q. That was about 1936, was it? A. Yes.

Q. And at that time did the Five and Over Club have a committee for settling grievances between its members and the management of the plant?

A. Not at that time.

Q. Not at that time. Now, when Mr. O'Keefe had talked to you about setting up a good grievance committee for the Five and Over Club, in 1945, was that the first time that the Five and Over Club ever had a grievance committee or had it had [496] grievance committees before that?

A. We had them before that.

Q. I see. When you were vice-president of the club, throughout that time, did the club have a grievance committee?

A. Well, it was soon after the A. F. of L. started to picket us. We had a picket line, and we formed a committee around that time.

Q. Now, do you recall in about 1937 you had pickets at the plant, is that correct?

A. I wouldn't say it was 1937. I don't remember the year, but we had A. F. of L. picketers there for quite a while.

(Testimony of Charles Spallino.)

Q. As a matter of fact, the A. F. of L. picketed the plant for approximately two years, did they not?

A. I would say.

Q. You were working at the plant during those two years, is that correct? A. Yes.

Q. And at that time did you hold any office in the Five and Over Club?

A. I might possibly be holding the vice-president job around that time.

Q. And during those two years when the A. F. of L. was picketing the plant, I take it you went through the picket line every day to work, is that correct?

A. Yes, our object was to keep unions out of our plant. [497]

Q. Was that one of the objects of the Five and Over Club when it was first started?

A. Well, that was the backbone of the factory, of the employees.

Q. Well, you have said that before, and I wonder if you would tell me how you know that?

A. Well, it has been told many times that it was the backbone of the plant.

Q. You members of the Five and Over Club at the time it was formed were people who felt that it was not desirable to have the union in the plant, is that right?

A. Well, in a way, you could put it that way.

Q. That was the general feeling of the members of the Five and Over Club, is that correct?

A. How is that again?

(Testimony of Charles Spallino.)

Q. Is that correct?

A. Let me hear that again. I don't want to say too far.

Trial Examiner Kent: Read it, Mr. Reporter.

(The question was read.)

The Witness: Well, I wouldn't speak for the whole club.

Q. (By Mr. Garrett): You said that the Five and Over Club was against unions. How do you know that?

A. I wouldn't say the Five and Over Club was against unions.

Q. Well, now, you recall testifying that it was their object to keep unions out of the plant, don't you? [498]

Mr. Nicoson: I submit that he did not so testify.

The Witness: I am a little confused on there.

Trial Examiner Kent: Wait a minute.

Mr. Nicoson: I object, assuming a fact not in evidence, contrary to the record.

Mr. Garrett: One moment, please. I think I can find that.

Mr. Nicoson: He used the term "we" but I don't think he was referring to the Five and Over Club specifically when he used the term "we" or said "We wanted to keep them out."

Mr. Garrett: I will go to my notes as to his speech on election day. "I told the members that I had worked there for 19 years and we never had had a union and we had always fought the union." When he said "we" it couldn't have been anybody

(Testimony of Charles Spallino.)

except himself and these fellow employees that he was addressing.

Mr. Nicoson: I don't think your interpretation of the word "we" is the proper one.

The Witness: I am talking about the company.

Mr. Nicoson: I suggest that the proper question would be to ask the witness who he had in mind by "we." I certainly do not agree that he was speaking at that time merely of the members of the Five and Over Club.

Trial Examiner Kent: Reframe the question.

Mr. Garrett: All right. [499]

Q. (By Mr. Garrett): When the Five and Over Club set up a grievance committee, was the plant still being picketed by the A. F. of L.?

A. Yes.

Q. And then it is a fact, is it not, that the Five and Over Club set up a grievance committee so that they could take the place of an outside union in the plant and settle their grievances themselves for their members with management. That is a fact, isn't it?

A. Well, I am afraid that I don't know. It would take a lawyer, I think, to answer that question I don't know how to answer that. I don't understand that.

Q. Let me put it this way: How did it come about in the first instance while the plant was being picketed by the A. F. of L. that this Five and Over Club established a grievance committee and

(Testimony of Charles Spallino.)

started to adjust grievances with management? How did it come about?

A. Well, I guess on the appearance that the union was out there trying to organize the place, that suggested this. The ruling power of O'Keefe and Merritt suggested that we form a committee reporting to, Bill O'Keefe was the fellow we reported our grievances to for quite a while, so that would come into a big story.

Q. Now, you can just answer my question truthfully and you won't have to tell the story. I will leave out some. [500]

Mr. Nicoson: I object to that characterization, truthfully, and that is argumentative.

Mr. Garrett: All right, I will withdraw that.

Q. (By Mr. Garrett): On this Five and Over Club, you didn't have a grievance committee when you started. That is true? A. No.

Q. To begin with it was just a social club, is that right? You had dances and dinners and what have you, correct? A. Yes, sir.

Q. And I suppose you gave out big turkeys and little turkeys even back in those days?

A. Well, the best we could at that time. Business wasn't so big, so we did the best we could with what we had.

Q. And this best you had was mainly little turkeys, is that correct? And now while this picketing was going on, you set up the grievance committee; that is right, too, isn't it?

A. While this picketing was going on, yes.

(Testimony of Charles Spallino.)

Q. That is right, and you did that because there was an outside union trying to get in there and you wanted the grievance committee set up to stop the union, is that right?

A. Yes, that we didn't need protection from outside, and we could handle our own affairs there.

Q. You could run your own business as employees, and as a part of running your own business as employees, you set up this grievance committee, is that right? [501]

A. To iron out any beefs or grievances that were in the plant.

Q. And you have had it ever since; is that correct?

A. Well, you see, I would have to get in a story there. It has never been an active one from the start, even though there was one.

Q. I see. But whether active or inactive, there has always been a grievance committee connected with the Five and Over Club from the time it was first set up during the strike, is that correct?

A. During the time of the picketing, yes, there was some sort of a grievance committee there.

Q. Did they settle grievances with management just for their own members or between any employees and management?

A. They were supposed to take all.

Q. And in the first years they usually settled those grievances with Bill O'Keefe, I think you said?

A. Well, if they were ever settled.

(Testimony of Charles Spallino.)

Q. It is then a fact, is it not, that the Five and Over Club was against outside unions?

A. Well, I would be speaking for everyone. I wouldn't know what everyone felt. There was an object there to have our own—it was not a union, but our own little family there that—well, the company to see that we had this little thing there, would give us things that we never got before, [502] as insurance and vacations and things that never came up before, so we were better off without the union in our place at all times. We were getting better than——

Q. Is that anything that was said in the meetings of the Five and Over Club, or was it written down in their laws, or how do you know that?

A. Well, that is a good deal—it is part of the politics, if you want the real word for it, it is part of the politics. There is leaders again—I won't explain it. It is a long story.

Q. Are you one of the leaders who set up the Five and Over Club?

A. No. I was always an active member. I worked myself from a bartender up to be president just by being active.

Q. You were always active in it?

A. If I may say one thing, I was told at one time that I was well liked by the men, but I was not well liked by the bosses. [502]

Q. I take it you were a bartender before you went to work for O'Keefe and Merritt, is that right?

(Testimony of Charles Spallino.)

A. No, I was a bartender for the Five and Over Club.

Q. Now, that is very interesting. Is the Five and Over Club's bar still open?

A. We had a lot of beer last night. I lost out.

Q. Oh, you were a part-time bartender yourself. That was just in addition to your regular duties?

A. At our meetings.

Q. When you signed this application with the C.I.O., just before you got your injury claim adjusted, you were still an active member of the Five and Over Club, were you not?

A. I was an active member, you say?

Q. Yes.

A. Yes, I have been an active member since 1935.

Q. And as a matter of fact at the time to which I refer you were vice-president of the club?

A. Not in 1935.

Q. No, but at the time you signed the C.I.O. application.

A. No, I was president.

Q. You were president?

A. That is right. I am getting down to the year now. It is around 1940—I will count on my fingers, '45, '44, '43, '42. '42, that is when I was president.

Q. Well, you testified first that this interview you told [504] us about happened soon after Pearl Harbor.

A. That was at the time of my injury.

Q. When you signed that C.I.O. card in 1942

(Testimony of Charles Spallino.)

you were not against unions any more at that time, were you? A. Well, no, I wasn't.

Q. Your views had changed very much since the days when you went through that picket line back and forth for two years, is that correct?

A. A lot of things happened.

Q. I see. Your views did change. Correct? You didn't any longer feel that it was to your advantage just to have a happy family in the Five and Over Club and no labor union.

Mr. Nicoson: I object to that as immaterial, and I also object to the extent of examination into this thing, which is all immaterial. I don't think it adds or detracts from anything.

Trial Examiner Kent: I wonder if this line is germane to the issues and how it helps us decide.

Mr. Garrett: I think I can show that, if your Honor please. I think the fact who this man is really working for when he does certain things is one of the crucial questions in this case.

Trial Examiner Kent: If your inquiry will be brief and limited to three or four more questions, I will let you proceed. [505]

Q. (By Mr. Garrett): Now, what did you do about obtaining membership in the C.I.O. after you signed that application card for them in 1942?

A. What did I do?

Q. That is right. A. I didn't do anything.

Q. What happened as a result of your signing that card if anything?

A. Well, I just signed it and forgot about it.

(Testimony of Charles Spallino.)

Q. Did you do any organizing for any union after you signed that card?

A. Oh, I probably passed some cards or something.

Q. You were passing out cards at that time too, were you? A. What time was that?

Q. Right after you signed the C.I.O. application card.

A. He has got me all bawled up.

Q. (By Mr. Garrett): Now, wait a minute. You know what I am talking about. It is the time immediately after you first signed the C.I.O. application card, while you were still sore because you hadn't had your personal injury claim adjusted to your satisfaction. That is the time I am talking about. Did you pass out cards then? A. No.

Mr. Tyre: Just a moment. I am going to object. That is a multiple question anyway. Let the counsel break it down and [506] ask one question at a time. It assumes a lot of facts not shown in evidence.

Mr. Garrett: I will withdraw the question.

Trial Examiner Kent: I think the answer is in, isn't it?

(The record was read.)

Trial Examiner Kent: Record will remain.

Q. (By Mr. Garrett): You did not pass out any cards at that time? A. No.

Q. But you passed out some cards, I think you testified——

A. Yes, right after the election.

Q. Right after the election? A. Yes.

(Testimony of Charles Spallino.)

Q. And that was for the C.I.O., wasn't it?

A. C.I.O., yes.

Q. Now I am not talking about after the election which was in November 1945, but I am talking about 1942. Did you pass out any cards then?

A. No.

Q. Did you pass out any cards in 1943 for any labor organization?

A. Not that I remember.

Q. Is it your testimony that you did not remember or that you did or did not?

Mr. Nicoson: I submit that his testimony is in the [507] record and should stand. I object to the attempt to try to change the answer which is already there.

Trial Examiner Kent: On the other hand, this is no cross-examination, and I think probably the inquiry is proper. You may take the answer.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Then, it is your testimony that you do not remember passing out any cards for any labor organization in 1943?

A. I did not pass them.

Q. You did not pass any out, it is not that you do not remember for sure, you didn't?

A. That is right.

Q. And you did not pass out any cards for any labor organization in 1944, did you?

A. We didn't have anything to do with unions at all during the war.

(Testimony of Charles Spallino.)

Q. Then you did not pass out any cards, is that correct? A. No.

Q. And you didn't have any contact with any union, either A. F. of L. or C.I.O., during the war until you met Mr.—— A. Roberts.

Q. Roberts, is that correct? Now, as a matter of fact, when you went through the plant getting cards signed for Mr. Roberts you told the men that whether they signed the cards [508] or not they could vote on the election for either the A. F. of L. or the C.I.O., didn't you? A. Yes.

Q. And you also told them they could vote for no union if they wanted to, did you tell them that? A. No.

Q. You didn't mention the fact that these people you were contacting for those cards could vote for no union? A. No, I told them——

Mr. Nicoson: Objected to as asked and answered.

Q. (By Mr. Garrett): What did you tell them in that respect? A. I told them——

Mr. Nicoson: Just a minute. I object that as assuming a fact not in evidence. The witness has testified that he told them that they could vote for whichever they wanted to, and he also testified that he did not tell them that they could vote for no union. That is all there is to that.

Mr. Smith: That does not mean that is all the conversation. He is asking for additional conversation.

Mr. Garrett: That is all I want. I don't want

(Testimony of Charles Spallino.)

to go beyond the witness' recollection of the conversations. I will withdraw the question.

Q. (By Mr. Garrett): You knew that in the election that any of those people who signed cards could vote for no union, [509] didn't you?

A. Sure.

Q. They could vote for the company, couldn't they?

A. No, there is only three ways to vote. It is either A.F.of L. Union, non-union, or C.I.O.

Q. The men who signed those cards were aware of that, weren't they?

A. Not until the National Labor Relations Board put the notice up.

Q. You informed them, didn't you, that after that happened they could vote for no union, didn't you?

A. I didn't inform anyone that they could vote for no union.

Q. Well, at that time you were meeting Mr. Roberts. Were you in contact with any representatives of the C.I.O.? Answer that aloud. I want the reporter to get it. A. No.

Q. When did you first meet Mr. Despol?

A. Soon after the election.

Q. When did you first meet his assistant there in the plant? A. At the plant?

Q. Yes.

Mr. Nicoson: I think that assumes the fact that there was an assistant in the plant, so I object to

(Testimony of Charles Spallino.)

that as assuming a fact not in evidence, and improper cross-examination. [510]

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Garrett): When did you first after the time you signed the card in 1942 talk with anyone connected with the C.I.O. about the labor situation in the O'Keefe and Merritt plant?

A. How is that?

Mr. Garrett: Mr. Reporter, read the question.

(The record was read.)

A. Well, the only party I ever talked to concerning the C.I.O. was Louis Ortega, one of the fellows who is working in the plant.

Q. And what did Louis Ortega do?

A. He works at the present time. He is a polisher. All my contacts have been through him.

Q. When did he go to work there?

A. Oh, he has been there several years.

Q. When did you first start to talk to Louis Ortega about the labor situation in the plant?

A. Oh, I would say since after my accident Louis and I always talked about C.I.O.

Q. Was he is a member of the C.I.O.

A. Yes, he has been a member of the C.I.O.

Q. I asked you what kind of work you were doing at that time, and I have forgotten the answer. Can you tell me?

A. At that time, yes, he has been a welder. I don't know [511] exactly what he was going at the time he joined the C.I.O., because he has been in

(Testimony of Charles Spallino.)

the C.I.O. for a long time, he has been connected with it.

Q. Do you know what C.I.O. organization Mr. Ortega belonged to? A. What.

Q. What C.I.O. organization did he belong to, if you know?

A. What C.I.O.? There is only one C.I.O. that I know of.

Q. Is he the man who is unit president for the C.I.O. now at the plant?

A. Yes, the steel workers.

Q. Now, with respect to Mr. Ortega, was he doing any organization for the C.I.O. in the plant?

A. Well, probably so. I didn't see him.

Q. Since when?

A. Well, I guess since we first went to organizing, the first meeting I went to after I went to Collins' office.

Mr. Nicoson: I would like to have the last two questions and answers.

(The record was read.)

Q. (By Mr. Garrett): Did you assist in that work?

Mr. Nicoson: Just a minute, I object to that as assuming a fact not in evidence. He said he probably was, he did not see him, so that certainly is not testimony that Ortega was so engaged. [512]

Mr. Garrett: I will withdraw that.

Trial Examiner Kent: Reframe it.

Q. (By Mr. Garrett): State whether or not

(Testimony of Charles Spallino.)

you know whether Mr. Ortega was organizing for the C.I.O. in the plant. Yes or no.

A. Whether he was?

Q. Yes, do you know?

Mr. Tyre: I will object to that unless a particular time is indicated, your Honor.

Mr. Garrett: Well, let's see.

Trial Examiner Kent: He may answer if he can.

Q. (By Mr. Garrett): In 1942 was Louis Ortega organizing for the C.I.O. in the plant?

A. Yes.

Q. So he did organizing before you signed the C.I.O. application card? A. What?

Q. Was he doing that kind *or* organizing there at the time you signed the C.I.O. application card?

A. Yes.

Q. And was he doing it after you signed the C.I.O. application card?

A. Well, I suppose he has been doing it all the time.

Mr. Nicoson: I object to what he supposed, and I move to strike the answer as not being properly responsive. [513]

Trial Examiner Kent: I suppose the counsel interrogating is the only one who can make that motion.

Mr. Nicoson: The record will show that I object to the supposition of the witness. They are his own conclusions, do not form evidence, and they are not responsive to the questions.

Trial Examiner Kent: Well, that probably is

(Testimony of Charles Spallino.)

true. I think that goes to the weight of the testimony probably more than anything else. The record may remain.

Q. (By Mr. Garrett): Now, in Ortega's organization and since you signed the C.I.O. card, have you assisted him? A. After the election, yes.

Q. Now, between the time when you signed the card and the election, what if anything did you do to assist Louis Ortega in organizing for the C.I.O. in the O'Keefe and Merritt plant?

A. After the election?

Q. No, I am addressing that question to the time between the time you first signed the C.I.O. card and the time of the election.

Mr. Nicoson: I submit that that is not what the witness testified to, and I object to it on the ground it assumes a fact not in evidence. The witness testified that he helped him after the election. I don't think he has testified that he ever helped him before.

Mr. Garrett: That is right, so he says, and that is just what I am asking him.

Mr. Nicoson: I object to the form of the question.

Trial Examiner Kent: You may answer.

A. I was off for about two and a half to three months, I don't know whether it was around that time in there, after I had signed this card I took a leave of absence, and I was away for about two and a half or three months.

Mr. Nicoson: You see, your Honor, the trouble with these very, very broad questions is that trying

(Testimony of Charles Spallino.)

to put it down to any time, because the witness is in an unfair position to even fairly answer the question put to him by counsel, assuming that he did do anything.

Trial Examiner Kent: I know. I wonder just how far I should go in restricting counsel, though, in this cross-examination. If you don't understand the question, don't hesitate to say so. Ask counsel his inquiry rather than take a long shot and guess what the question means.

Q. (By Mr. Garrett): After you came back from your leave, from that time on, what if anything did you do to assist Ortega in organizing for the C.I.O. in the plant?

A. Well, sir, there was a lot of talk at lunch time wherever I ate my lunch, when there was any union talk or anything like that, I would state that the C.I.O. was more for the working people than the A. F. of L. We had a lot of talks [515] like that day in and day out, and I always preferred the C.I.O. to the A. F. of L.

Mr. Garrett: May I have that answer read, please.

(The record was read.)

Mr. Garrett: I notice we have reached the hour of 4:30.

Trial Examiner Kent. Yes. I understand that to-day we are going to recess at 4:30 and be adjourned until 9:30 Monday morning. I would ask that counsel get here promptly at 9:30.

(Whereupon, at 4:30 o'clock p.m., March 15, 1946, the hearing in the above-entitled matter was adjourned until 9:30 o'clock a.m., Monday, March 18, 1946.) [516]

Monday, March 18, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: The record might show Mr. Collins, Mr. Reed and Mr. Smith are not here. Since Mr. Garrett is continuing with his cross-examination of Mr. Spallino, I think we might go ahead at this time. The other counsel can pick up the examination in the transcript.

CHARLES SPALLINO,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Garrett:

Q. Do you recall, Mr. Spallino, that at the close of the hearing Friday you were telling me that during the time in the latter part of 1945 that they were having the agitation about unions at the plant, that you used to make it a point at lunch time and whenever you talked to the other men to tell them you thought the C.I.O. was the better union. Do you recall that? A. Yes.

Mr. Tyre: I object to that. It assumes a fact not in evidence. He testified he had a conversation with Mr. Ortega.

(Testimony of Charles Spallino.)

Trial Examiner Kent: That seems to me to be my recollection.

Mr. Garrett: That is not the record, however.

Trial Examiner Kent: All right. What does the record [521] show?

Mr. Garrett: As a matter of fact, since Mr. Tyre misstated the record I will read the witness' last answer on page 515 of the transcript, which is:

“Well, sir, there was a lot of talk at lunch time wherever I ate my lunch, when there was any union talk or anything like that, I would state that the C.I.O. was more for the working people than the A. F. of L. We had a lot of talks like that day in and day out, and I always preferred the C.I.O. to the A. F. of L.

“Mr. Garrett: May I have that answer read, please?”

At my request the answer was read. Then the adjournment.

Q. (By Mr. Garrett): Now, Mr. Spallino, when you first talked to Collins—

Mr. Garrett: All right. Mr. Tyre seems to question whether I have read accurately from the record. I will ask for a recess so that he can refer to the record. If he will read from the same record I believe the reporter will record the exact words.

Mr. Tyre: I am not questioning what you read, Mr. Garrett.

Mr. Garrett: The last answer.

Mr. Tyre: The only thing I am requesting is that I see the transcript. I only want to see where you read. [522]

(Testimony of Charles Spallino.)

Mr. Garrett: Have you refreshed your recollection from the record now, Mr. Tyre?

Mr. Tyre: There was some question as to whether or not he was talking about his conversation with Ortega. I think you will find in a question or two before that you were then asking about the conversations with Ortega.

Mr. Garrett: I will stand on the record.

Q. (By Mr. Garrett): When you first had those conversations with Collins, and O'Keefe, just prior to the time you took the cards from Roberts to get signed, you knew that the O'Keefe & Merritt Company was on the A. F. of L. unfair list, did you not?

A. I did.

Q. You had known as a matter of fact that it was on the unfair list since the strike in 1937, is that right?

A. That is right.

Q. How did you know that?

A. Well, by hearsay.

Q. Hearsay, people around the plant who were interested in the matter told you from time to time the company was still on the A. F. of L. unfair list, is that right?

Mr. Nicoson: I will object to that question unless he brings out who told him.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Who did tell you? [523]

A. That they were on the unfair list?

Q. That is right.

A. Well, seeing the union activities outside, picket lines and all that, the only——

(Testimony of Charles Spallino.)

Q. As a matter of fact, you saw the A.F. of L. unfair list from time to time and saw the O'Keefe and Merritt Company was on there, did you not?

A. Well, that is just hearsay.

Q. You haven't any doubt in your mind at this time, have you, that the O'Keefe and Merritt Company was on the A. F. of L. unfair list from the time of the strike in 1937 up to the time of the election in 1945?

Mr. Nicoson: Objected to as immaterial. It is a question of fact whether they were on the unfair list. Whether he had any doubts about it or not is not evidence.

Mr. Tyre: His state of mind today is not material to the issues.

Trial Examiner Kent: I think we might save time. The answer may be taken.

Q. (By Mr. Garrett): Do you remember the question, Mr. Spallino? A. Not truly.

Trial Examiner Kent: Read the question.

Q. (By Mr. Garrett): You had no reason to doubt that the O'Keefe and Merritt Company was actually on the A. F. of L. [524] unfair list during all the time between the strike in 1937 and the election in 1945, did you?

Mr. Nicoson: Same objection.

Trial Examiner Kent: The answer may be taken.

A. No, I didn't have any doubt.

Q. (By Mr. Garrett): That is right. And as a matter of fact, after the election, when Mr. O'Keefe talked to you about the difficulty in getting building

(Testimony of Charles Spallino.)

contractors to use the O'Keefe and Merritt product, he told you at that time that they were still on the A. F. of L. unfair list, didn't he?

A. I don't understand that.

Q. Well, at the time he talked to you about the difficulty, remember you had this conversation with O'Keefe when you went up there and talked to him about whether or not the Five and Over Club was going to retain its benefits after the election; do you recall that?

A. Yes.

Q. And do you recollect his telling you that he had had a conversation with one building contractor and his daughter had had a conversation with another, and it was no good, the A. F. of L. building contractors would not set the O'Keefe and Merritt products, do you recall that?

A. That was a matter of fact, that the building contractors were under the A. F. of L., yes.

Q. That is right, and do you remember he told you that he [525] could not get his products set on that account, is that right?

A. Yes.

Q. And that the reason the A. F. of L. building contractors would not set the O'Keefe and Merritt products was because the O'Keefe and Merritt Company was still on the A. F. of L. unfair list. That was correct, wasn't it?

A. That is right.

Q. And as a matter of fact the O'Keefe and Merritt Company is still on the A. F. of L. unfair list, is it not?

A. I don't know.

Q. Do you have any reason to believe it is not?

(Testimony of Charles Spallino.)

Mr. Nicoson: I object to that, calls for the conclusion of the witness, not evidence, immaterial.

Mr. Tyre: I join in that objection.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Now, as a matter of fact, after V-J Day you knew the company would have to go back to making its peacetime line, didn't you?

A. That is right.

Q. It reconverted very fast, isn't that right?

A. Well——

Q. They stopped their war activities and their war orders very quickly after V-J Day, did they not? A. Well, it took time, yes.

Q. How long? [526]

A. Well, they just now started production.

Q. But you knew soon after V-J Day, did you not, that the company was going to have to go back to its peacetime line? A. Yes.

Q. That was stoves and refrigeration, is that right?

A. I knew they were not going to build any refrigerators. As far as stoves are concerned, yes.

Q. And large commercial installations, is that right? A. Yes.

Q. You knew, did you not, Mr. Spallino, that since the strike in 1937 the A. F. of L. had become very much stronger in the construction industry in this area than it had been at the time of the strike in 1937?

Mr. Tyre: I am going to object to that question.

Trial Examiner Kent: I think it clearly would

(Testimony of Charles Spallino.)

call for the conclusion of the witness. I wonder if he would have any basis of fact.

Mr. Garrett: I am only asking if he knows.

Mr. Tyre: I further object, besides because calling for a conclusion of the witness, the answer is entirely irrelevant and immaterial to the issues in this case. I think this entire line is proceeding along immaterial lines at this time.

Mr. Garrett: I think it is immaterial what Mr. Tyre thinks, and I don't think that should be considered.

Trial Examiner Kent: What was the question, Mr. Reporter? [527]

(Question read.)

Trial Examiner Kent: He may answer.

The Witness: I wouldn't have no way of knowing because I wasn't interested in union activities. I didn't know how they functioned. I never been a union man in my life.

Q. (By Mr. Garrett): When Mr. O'Keefe, after the election, told you that the A. F. of L. building contractors wouldn't accept the O'Keefe and Merritt products, you understood what he meant by that?

A. I think I understand English. He was speaking English to me. I understood what he said. I repeated what he said.

Q. You knew that was very important, did you not, because at that time——

A. I couldn't be sure it was important, because I don't know how things operate.

(Testimony of Charles Spallino.)

Q. I see. You didn't have any idea at that time it was very serious, the A. F. of L. wouldn't accept the O'Keefe and Merritt Company because all the building contracts were A. F. L.

Mr. Nicoson: Objected to as being immaterial, as to whether he had any ideas about it or not. I submit this whole line of examination is immaterial and irrelevant.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): As a matter of fact, when you first had your first conversation with Mr. O'Keefe and Mr. Collins, [528] before you took the cards from Mr. Roberts, you believed that the Five and Over Club was all the employees' organization that was needed in the O'Keefe and Merritt plant; did you not? A. Will you repeat that?

Mr. Garrett: The reporter will read the question.

(The question was read.)

The Witness: No.

Q. (By Mr. Garrett): When did you first come to the conclusion more was needed besides the Five and Over Club?

A. When I first started learning the different parties that took office and the politics in it, that it was a tool; the Five and Over was a tool.

Q. I see. When did you come to the conclusion that the Five and Over Club had become a tool?

A. Well, that was after this last election especially.

Q. All right. Now, prior to the election, however,

(Testimony of Charles Spallino.)

did you feel it was to the interest of the Five and Over Club and its members to help the company to prosper, the O'Keefe and Merritt Company to prosper, so the Five and Over Club and its members could share in the benefits? A. That is right.

Q. That was the policy of the club from its inception; was it not?

A. My answer would be kind of long.

Q. Go ahead. [529]

A. Prior to this last election in 1945 Collins' brother-in-law held office as the Five and Over president.

Q. Let me interrupt just for a moment, to ask for his name.

A. Bill Cole is his name.

Q. Is that spelled C-o-l-e?

A. That is right. Now, he was president; he is a foreman. He had a lot of privileges which I didn't have. I will state some instances that were different from what I had to do.

In my time as president I had to pay the—the club paid for all the expenses that was due to the club. During the time that Cole held office we had one case there where we bought turkeys and the company furnished \$900.00 toward those turkeys, which I didn't get the assistance from the company.

Q. They didn't do that the year you were president?

A. No, because they wouldn't O.K. anything like that. You see this button I wear here (indicating)? Or the 20-year ring, we called it. Those bills were

(Testimony of Charles Spallino.)

turned in to the company and the company paid for those rings during his time.

When I took office I had 5 or 6 rings to offer 20-year men. The bill was turned in to the company and it was turned down. The club paid for those rings. [530]

That is the difference. It all depends on who runs the club and how they run it, if they run it in the favor of the company or in favor of the men.

So I paid for my rings. It was turned down. And, in fact, when I bought these last turkeys I was warned if we didn't have enough money to not take a chance to buy turkeys, because the company got stuck on the last bunch.

Mr. Collins: I object to that and move the answer be stricken on the ground it doesn't tend to prove or disprove anything in the case. It is the rankest kind of conclusion of this witness, that the company bought turkeys or anything else, because one particular man was president of the club. There could have been a thousand and one other reasons. I could think of two or three others.

The Witness: I could think of one.

Mr. Collins: Just a minute. The first and most pertinent would be the violation of the Wage Stabilization Act—would have been a violation of the wage fees to have added anything to the wage of these employees, without the permission of the government. It was during the time of the war. There are a thousand and one reasons why that would not have been the case.

(Testimony of Charles Spallino.)

Upon the grounds I have heretofore stated, it is a conclusion of the witness, I move it be stricken.

Mr. Tyre: I submit, your Honor, that if counsel for the [531] company has any objection to the question it should be taken before the answer is given, rather than waiting until he hears what it is, and object afterwards.

Trial Examiner Kent: I can see where the testimony may or may not be relevant. The issues here are so intermixed that for some purposes I can see where this testimony might be relevant. I will let the record remain.

Mr. Garrett: Has your Honor ruled?

Trial Examiner Kent: Yes. The answer may remain.

Q. (By Mr. Garrett): It will be your testimony then, Mr. Spallino, during the time Mr. Cole was president of the Five and Over Club it was not an independent organization, but after you became president it was independent; is that right?

Mr. Tyre: I object to that as calling for a conclusion.

The Witness: I don't see——

Mr. Tyre: Just a minute.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Garrett): Do you want that question read?

A. Yes. Read that.

(The question was read.)

(Testimony of Charles Spallino.)

The Witness: Well, I don't understand independent or not independent. It has been the same, as far as I have known it. In fact, that was during the war when these turkeys were given out.

Q. (By Mr. Garrett): As a matter of fact, however, after you [532] became president the company ceased to give the club the same co-operation it gave before; is that correct?

A. It has happened before. Whenever I took over, I didn't get any assistance. I worked everything through myself.

Q. In other words, whenever you were president and any of the times you were president of the organization, it was operated without the company's assistance; is that correct.

A. That is right.

Q. That is, independent; is that correct?

A. That is right.

Q. All right. Now—

A. What do you mean "independent"? That is what it is supposed to be.

Q. You made it above what it was supposed to be?

A. That is right.

Q. You were a man who is honest in his own convictions; is that correct?

A. Yes. We didn't ask for any assistance.

Q. You felt the club ought to be operated as an organization for the employees?

A. That is the way it is supposed to be.

Q. Feeling the way you do, you wouldn't be the kind of man to operate it any other way?

A. No.

(Testimony of Charles Spallino.)

Q. You would be honest and be a true man?

A. Yes.

Q. You would preserve the club's independence?

A. This particular club I was talking about, the rings, it was told me the company was taking care of them—weren't taking care of it during Cole's office. When I took office the bill was turned in as usual and it was turned back to me and I was told the club was to pay for it, and that was that. I had to pay for it.

Q. As a matter of fact, the company had an interest in arranging things so it could get its products accepted in the construction industry? You knew that?

A. You talk a little too fast for me.

(The question was read.)

The Witness: I don't understand.

Q. (By Mr. Garrett): You know there was no good in making these stoves and equipment if you couldn't sell them? You knew that; didn't you?

A. I also knew—I didn't think it made any difference if you were C.I.O. or A.F.L. products, as long as it was organized labor selling the goods it would still be sold.

Q. You knew the A.F.L. wouldn't handle the products made in a C.I.O. shop; didn't you?

Mr. Tyre: I object.

Trial Examiner Kent: I will sustain the objection. I think we are getting into an argument with the witness. I [534] question just how much the

(Testimony of Charles Spallino.)

witness' conclusions have as weight on these things.

Mr. Garrett: All right. I am trying to find out what his purpose was, if your Honor please.

Q. (By Mr. Garrett): Now, when Mr. O'Keefe, after the election, told you that he couldn't get the O'Keefe and Merritt products accepted in the construction industry, was this a surprise to you?

A. That he could sell his materials?

Q. That is right.

A. See, I would have to get back into another little story there. Prior to the election——

Q. Wait a minute.

Trial Examiner Kent: Read the question.

(The question was read.)

The Witness: Well, not knowing anything about union wages of working, I wouldn't say anything to that, because I wouldn't know what the union—I never been a union man. I don't know what they do or how the laws in this country are. I thought we still had freedom in this country, we could still sell our goods wherever we want to; that is the way I always believed.

Mr. Garrett: May I have that last answer read by the reporter, please.

(The answer was read.) [535]

Q. (By Mr. Garrett): You know what a boycott is, don't you?

Trial Examiner Kent: I wonder if you are not going to try to drag out a legal conclusion.

The Witness: I think that would be a real argument.

(Testimony of Charles Spallino.)

Mr. Garrett: I will withdraw the question.

Q. (By Mr. Garrett): You knew the company was on the unfair list, didn't you?

A. Well, as far as I knew they were years back. I don't know whether they still are or what.

Q. As a matter of fact, you knew just before the election that the company was still on the unfair list, because Mr. O'Keefe told you, "We have to get off that unfair list," isn't that the fact?

A. Before the election we were off the list because we had a charter from the A. F. of L., and we were off that list before the election.

Q. What did you think before the election when he told you, as you testified, "We have to get off the A. F. of L. unfair list?" What did you think he meant?

Mr. Collins: On behalf of the company, I will stipulate at this time that we are not off the unfair list yet, if that will shorten the proceedings any.

Q. (By Mr. Garrett): Will you answer that question?

A. What does it mean to be off the unfair list?

Q. What did you think O'Keefe meant when he told you just [536] before the election, "We have got to get off the A. F. of L. unfair list?"

Mr. Nicoson: I will object to that as calling for a conclusion of the witness, does not tend to prove or disprove any issue in this cause. The facts speak for themselves and what this witness thought about them is immaterial.

Mr. Garrett: This man's motives and his state

(Testimony of Charles Spallino.)

of mind are one of the issues in this case, if your Honor please.

Trial Examiner Kent: The answer may be taken.

The Witness: Well, we were on the unfair list. I know what the unfair list means, yes.

Q. (By Mr. Garrett): You knew what it meant? A. Yes.

Q. And you know it means that certain people won't patronize a firm which is on the unfair list. You knew that, didn't you? A. That is right.

Q. You knew that all the time, didn't you?

A. I suppose I did.

Q. And you knew it also meant the A. F. of L. workers would not work on the product that came from the firm on the unfair list, you knew that, too, didn't you?

A. Well, that could work both ways.

Mr. Nicoson: Just a minute. I object to that because I think that is an impossible question to answer. I don't know whether it is a fact that they will refuse to do it or not. [537] I think it can possibly be proven it is not a fact, that they have worked on products of that kind.

Trial Examiner Kent: Well, we are delving into realms of speculation to some extent.

Mr. Garrett: All right.

Q. (By Mr. Garrett): After the first time, Mr. Spallino, that you talked to Mr. Collins in his office about the A. F. of L. Unions, after that time you were trying to help the company get off the A. F. of L. unfair list, weren't you?

(Testimony of Charles Spallino.)

A. I was not trying to get—what is that, I was trying to get the A. F. of L. off the unfair list, you say?

Trial Examiner Kent: Read the question.

Q. (By Mr. Garrett): You were trying to help the company get off the unfair list, weren't you?

A. I was trying, I was working with a group of men here that were telling me a lot of things, and I was trying to work with them, but I was not working with them.

Q. Collins told you and Levascos at that first meeting in his office, you testified about——

A. That was a plot.

Q. Well, I don't care whether it was a plot or not. Didn't he tell you that the company had to get off the A. F. of L. unfair list?

A. Well, that is the story.

Q. That was the story, and you believed it at the time, didn't you? [538]

A. Not in my heart.

Q. You believed it or you would not have done the things you did.

Mr. Tyre: I will object to that. That is argumentative, your Honor.

Trial Examiner Kent: I think it is. I think I will sustain the objection.

Q. (By Mr. Garrett): All right. Now, as a matter of fact, after that first interview in Collins' office where he told you and Levascos that the company had to get off the A. F. of L. unfair list, as an officer of the Five and Over Club you thought

(Testimony of Charles Spallino.)

it would be easier for the company to sell its products if they did get off the A. F. of L. unfair list, didn't you?

A. You make those questions pretty hard for me to explain, that sort of thing.

Q. Why don't you answer it yes or no, and then explain the answer. You are permitted to do that.

Mr. Nicoson: Your Honor, I submit they are not capable of being answered by a simple yes or no. They are very complex questions.

Trial Examiner Kent: No, that is true, I think. You may generally answer briefly. All witnesses are at liberty if they do not think a short and concise answer is a fair [539] and complete answer, are at liberty to enlarge upon their answer and amplify it. I don't mean that you should try to amplify every answer that you give, only in answering a question which you think requires further explanation, you can do it.

The Witness: But, your Honor, the way he is asking me these questions won't explain why the organized plotting was going on and they had the opportunity——

Mr. Collins: Just a moment. I move that be stricken upon the ground it is a conclusion of the witness.

Trial Examiner Kent: It may be stricken. Let's start with the question. Let's hear the question, and if you don't know what it means, you are at liberty to ask counsel to further elucidate and to

(Testimony of Charles Spallino.)

consider the question first, and if you can answer, go ahead and answer it.

The Witness: But, your Honor, what I mean—

Trial Examiner Kent: Wait a minute, now. Consider the question. Read the question to him, Mr. Reporter.

(The question was read.)

The Witness: I thought that any union would in fact, get them off the list. After all, the C.I.O. is just as strong as the A. F. of L. I figured any union would be.

Q. (By Mr. Garrett): But you knew the company could not get off the A. F. of L. unfair list by going C.I.O., didn't you? [540]

Mr. Nicoson: I object to that. The witness has shown no qualification for knowing any such thing. I submit that that would be the most difficult question even for counsel in his position to answer or for anyone in this room more experienced than this witness, to tell what it would take to get this company off the A. F. of L. unfair list. Maybe if we had King Solomon here he might be able to divine the answer, but certainly not we poor mortals.

Trial Examiner Kent: I wonder if we are not trying to raise and solve an issue which is not directly germane to the issues in this complaint by this last inquiry.

Mr. Garrett: I beg your pardon?

Trial Examiner Kent: I say, I wonder if we are not trying to raise and solve an issue which is

(Testimony of Charles Spallino.)

not germane to the issues actually raised in this complaint, by this line of inquiry.

Mr. Collins: I don't think so, your Honor.

Mr. Garrett: You see, as Mr. Collins said the other day, he pointed out that frequently objections are raised by counsel ill advisedly to questions on cross-examination merely because if they can get the officer who has the ordering of the trial to rule narrowly on questions on cross-examination or demand offers of proof merely so that the Examiner will have to state his position before the witness and lose the benefits that cross-examination should have in [541] every hearing, in the unusual power to properly conduct the cross-examination to elucidate the truth, particularly from a reluctant witness. I can tell your Honor why this question is germane, if your Honor holds me on cross-examination to the same strict rules as your Honor might apply on direct, I will have to tell your Honor, but then the witness will know and be forewarned and I believe be able to continue to evade the issue and continue to withhold the truth.

Trial Examiner Kent: To save that, I will ask the witness to step out of the room just a minute, then I will listen to it. You may just step outside the room for a minute.

(The following took place outside the presence of the witness.)

Trial Examiner Kent: You say, Mr. Garrett, objections are sometimes made to get the hearing officer to commit himself on the reason for his rul-

ing. Maybe the hearing officer ought to be a little bit more guarded and not commit himself.

Mr. Garrett: Offers of proof, of course, in court, can be made in this way, out of the hearing of the jury and out of the hearing of the witness, and I think this is the proper way to make it, if it is an important line of questioning that is sought to be shut off, as I think the line of questioning here is. Here is my position, your Honor: Certainly my examination [542] is within the scope of the direct examination. This man was permitted to testify on direct examination by both Mr. Nicoson and Mr. Tyre time and time again as to conversations in which this question of this A. F. of L. unfair list came up. You recall the first time that he became enlisted in the present activity involving the A. F. of L. and the C.I.O., it was under circumstances where at the outset of that interview, which was the beginning of the participation in the present situation, he was informed at the outset we have got to get off that A. F. of L. unfair list. He testified further that from the time of his first participation in this club, in which he was the guiding spirit, throughout the period of time involved in this case, he is attempting honestly to help the company in the belief which so many of these persons in inside organizations erroneously get that if he will help the company to prosper, why, the benefits will be handed on to this inside organization which cooperates so nicely and which spares the company the embarrassments and problems an average employer has with the average union. In that state of mind,

he had every reason to believe, not only as an individual but as a policy maker for this Five and Over Club, in the capacity as an officer of the Five and Over Club, he did practically every act which it is now sought to prove assisted the A. F. of L. There is every reason to believe not only his view, but also [543] the view of the organization that he represented, that the war being over, the immunity of the war time period being removed, the production of the war time product which did not require A. F. of L. assistance in its installation being stopped, the return of the company's production to the pre-war product which it had to install in A. F. of L. construction, that that being the case, it was the legitimate purpose of a man who is in that state of mind and also the legitimate objective of an organization which had the objectives that the Five and Over Club had, to assist the company in getting off the A. F. of L. unfair list so the company could sell its product and so that the witness and his club members could have employment, and employment by a company which was successfully selling its product and could afford to pay good wages and not by a company that was being troubled by a boycott against its product in the A. F. of L. Construction Trades, and naturally, under those circumstances, could not prosper and could not pay its employees, and under such circumstances the employees could not prosper.

Now, he stated earlier in this cross-examination, "I never helped the A. F. of L. in good faith." He

stated earlier in this examination that during the very time he was circulating these cards, and that is what Mr. Tyre did not want to have read on the record, that during that very [544] time he was talking in the plant against the A. F. of L. and for the C.I.O. in the highways and the byways, in the fields, on the beaches, in the streets, the way Churchill put it, over his lunch pail wherever he could possibly get in a lick, he was getting in a lick for the C.I.O. and against the A. F. of L.

Now, if the company is assisting the A. F. of L. Union, two questions are pertinent: One, is the company actually assisting the A. F. of L. Unions through the Five and Over Club, or is the Five and Over Club in and of itself and sui sponte as the result of its policies assisting the A. F. of L. organizations of itself and on its own behalf? That is one question.

The next question is, if the A. F. of L. is being assisted in organization and it is sought to strike down the A. F. of L. contract in this situation by proving it was assisted, is it a fact that the A. F. of L. was assisted, or is it a fact that the A. F. of L. was being betrayed?

Now, the state of mind of this man as to why he did the things he did, we have got to determine what his state of mind is, first, before we ascertain whether the A. F. of L. was assisted at all, and, second, whether the A. F. of L. was assisted by the company in violation of the Act, or by the club and not in violation of the Act. Now, that being the case, who can say that it is not germane to the

issues in [545] this case for me to bring out from this evasive witness whether or not his objective was to violate the Act if he could, as an officer of the club, and help the company violate the Act, or whether he was simply trying to do anything that would effectuate his purpose and the purpose of the club, which is to get the company off the unfair list and betray the only union which could do it? On that side of the question I am asking him what he sought, did he know what the effect of the unfair list was. He said he did. Now, I am asking you, when you did these things, you did them after being told by the company that they had to get off the unfair list, when you did these things, did you do it honestly, believing that it was a good thing for the company to be off the unfair list, or did you do it merely because you wanted to help the A. F. of L., or did you do it merely because the company told you to.

Now, what his belief is and whether or not he as an individual should assist the company off the unfair list and their product, his product off the unfair list, is separate in fact, and his attitude toward that as an officer of the club, that is what I say is material. I think that is the crux that determines what legal affect, if any, this witness' testimony, and all of it, would have.

Mr. Nicoson: I don't think that that statement requires much of an argument. I certainly will concede that if this [546] witness has any improper motives, by which he may attack his credibility, counsel would certainly have a right to inquire into

that. I submit so far he has been unsuccessful.

I think the whole line of questioning is only cluttering the record and is not accomplishing even what he says it is to accomplish.

Third, I think it is unimportant what this witness thinks. I think the important thing is what he did, the impetus that caused him to do what he did and the effect of what he did, so far as the issues of this case are concerned, whether he was prompted by the most impure motives or whether he was prompted by the purest motives doesn't detract from what he actually did in signing up these A. F. of L. people at the instance of the company.

Now, that is our case. I think all of this material is cluttering up the record. It isn't accomplishing a thing here. And while I haven't objected a great deal, I thought, in the interest of time, it might be well to let him pursue it. But I still think the whole line of examination is improper, and if it is pursued further I will make appropriate objections at the appropriate time. That is all I have to say.

Mr. Collins: I think, if your Honor please, the question of whether or not the employees of O'Keefe and Merritt Company or Pioneer Electric Company know whether or not O'Keefe and [547] Merritt was on the unfair list is highly pertinent to the issues in this case and is the real reason why the employees would have assisted the A. F. of L., if they did, rather than to assist the C.I.O. They

saw something to gain if they could help to get the company off the unfair list.

I see an opportunity to impeach the testimony of this witness as properly cross-examining him on the subject of the unfair list. He has made several statements in the record which I think now are being contradicted by the testimony Mr. Garrett has elicited from this witness. I think I have some questions myself. I don't think I need go into them now, until the appropriate objection is raised when I get into the cross-examination. That is the whole gist of it. Why did they join the A. F. of L. instead of the C.I.O.?

Mr. Tyre: I have only a short statement to make in response to Mr. Garrett's lengthy dissertation. First, I agree whole heartedly with Mr. Nicoson. What we are interested in is not the state of mind of Mr. Spallino, but only in what he did and what he did in connection with what the company told him to do or what the company didn't tell him to do or the company told him not to do. That is all we are interested in. [548]

I don't care what his motives were in carrying out the company's instructions. The only things that are material are what were the company's instructions and how were they carried out by this individual.

I have no objection to any cross-examination on what his actions were or how he did or did not carry out the instructions of the company, or what were or were not the instructions of the company. But it is not material to go into the state of mind.

Now, it seems to me that a great deal of this examination is going into the question of whether or not the A. F. of L. had placed the company on the unfair list and what it meant. The only testimony, as I can recall, that was brought out from this witness on direct examination, with respect to the unfair list, is what did Mr. O'Keefe or Mr. Collins tell him about the A. F. of L. placing this company on the unfair list.

The testimony from Mr. Spallino was not brought out for the purpose of showing the truth of the fact that the A. F. of L. had placed the company on the unfair list, but only for the purpose of showing that the company stated that the A. F. of L. was placing the company on the unfair list, and that for that reason the company had to become an A. F. of L. shop and not a C.I.O. shop.

In other words, this testimony of Mr. Spallino was not elicited for the purpose of showing the truth of the [549] statements made by Mr. O'Keefe and Mr. Collins, but only for the purpose of showing they were actually stated. For that reason it is improper to go into Mr. Spallino's testimony on cross-examination to rebut the truth of the statements that were made by the company. Cross-examination can be permitted on this line only for the purpose of showing that Mr. Collins or Mr. O'Keefe or someone else did not actually make that statement.

Mr. Smith: Mr. Trial Examiner, I think I will add my little bit here, also. I think what Counsel Nicoson and Tyre object to is the fact the testimony

is being brought out which they didn't expect and with which they are very disappointed. The state of mind is most material.

Mr. Tyre himself argues that their purpose in asking certain questions is not consistent with the purpose had in mind by Mr. Garrett. The purpose is the state of mind, I submit, and I think I needn't tell you that or elaborate on that.

The fact they may have had the different purpose than Mr. Garrett doesn't bind Mr. Garrett to their purpose. The fact remains they saw fit to bring out the unfair list on direct, thereby opening up to Mr. Garrett, as he sees fit to ask, any and all questions relevant thereto. That is what he is doing.

So far as the Act is concerned, the witness, as I have heard him, has testified that while the company told him [550] certain things, he has time and time again mentioned things, such as scheme, plot, "I didn't do that. In my own heart I felt differently."

It is most material whether unfair denotes—partially is a state of mind, what went on and who told this witness is not unfair. That goes into what was in the mind, and in the mind of the witness, and this proceeding will resolve itself in favor of the company and the unions concerned who have been charged with unfair tactics.

I submit the only way to find out what actually was the state of mind which is most pertinent to a subjective subject, such as unfair, it is nothing

you can put your finger on by way of saying, "He went east or west or so forth."

Therefore, it is unfair. It is not anything he can actually do, but what was done in the light of certain circumstances. And those circumstances are, in part, determined by what this man had in mind.

If, as Mr. Collins pointed out, he did these things to preserve his own job and to preserve the jobs of his fellow associates and working men, the company can't be charged with any unfair practices. That is why it is most relevant for Mr. Garrett to ascertain whether or not this man had the purposes in mind which Mr. Garrett is trying to find out, or some other purposes.

I submit state of mind, while different from the purposes [551] had in mind by Mr. Tyre on direct examination, does not agree with his. The fact that it doesn't concur and coincide with their purposes certainly doesn't make cross-examination objectionable.

Trial Examiner Kent: Well, I do think that the inquiry is not particularly germane to the issues.

On the other hand, there is a question of credibility involved, and I think the cross-examiner, from that standpoint, is entitled to inquire further.

However, I would request the inquiry along this line be relatively brief.

(The witness returned to the hearing room and resumed the stand.)

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Did you have any further discussion when you and Mr. Levascos talked to Mr. Collins about what he meant in that interview when he said the company had to get off the A. F. of L. unfair list?

A. I didn't get it straight.

Trial Examiner Kent: Read the question.

(The question was read.)

The Witness: I don't remember the discussion.

Q. (By Mr. Garrett): Was there anything more said on that subject after Collins said that the company had to get off the A. F. L. unfair list by either you or Collins or Levascos?

A. Well, he did explain the way to go around it, to get [552] certain guys to sign up in the A. F. L. In fact, I think Mr. Roberts if he had been there, he would have been disappointed, because they were even going to just get enough members just to get off the list, and then to keep the shop non-union; just a limited amount of men in the union.

Q. That is true. Now, was that brought out at that conversation? Who said that?

A. Mr. Cecil Collins.

Q. All right. Now, will you tell me exactly what he said along those lines?

A. Exactly what he said?

Q. Approximately, to the best of your recollection.

A. Well, exactly what I can remember is that, "You and Johnnie sign up these Five and Over

(Testimony of Charles Spallino.)

members, and get the ones that just became members and pick some of the new men that are out there that are easily led. And between you and Johnnie, why, get yourself appointed at the top so that—you can easily lead them.”

Q. That is right. And the company would stay non-union; is that correct?

A. Well, just be enough union there to get off the list, yes.

Q. In other words, you could go out and get these cards signed, but you could work against the A. F. L. in the election so the A. F. L. would lose the election; is that correct? [553]

Mr. Tyre: I am going to object unless the question is clarified. If he is asking whether or not that was a statement made by Mr. Collins, then it can be answered. If he is merely arguing with the witness, I submit, your Honor, it is objectionable.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Garrett): Did Mr. Collins say something to that effect, that you should go out and get the cards signed up and get the A. F. L. started, but that you could then fix it up so the A. F. L. would lose the election?

A. Collins didn't make that kind of a statement, that they lose no election. They didn't *take* about the election. They wasn't worried about the election.

Q. But you weren't really attempting to assist the American Federation of Labor, but only to

(Testimony of Charles Spallino.)

assist the company, is that correct, to get off the unfair list?

Mr. Tyre: I object to that. It calls for a conclusion of this witness. It is not material to the issues.

The Witness: We were to assist Mr. Roberts—

Mr. Tyre: Just a minute.

Trial Examiner: I will sustain the objection. I think the conclusion must be made by something else.

Q. (By Mr. Garrett): As a matter of fact, you agreed with Collins in that interview that it was a good thing to get the company off the unfair list; didn't you? [544]

A. Well, giving him those 50 signatures there would have got us off the unfair list, yes.

Q. You did that to get the company off the unfair list; didn't you?

A. I did that for that? Like I stated before, that I was working for the C.I.O. In fact, they were organized, so I organized myself with Mr. Ortega. I think I made that statement before.

Q. By the way, when you were circulating these cards did you have any conversation with Mr. Louie Ortega? A. Yes.

Q. Did you tell him what you were doing?

A. I told him what I had to do, what I was told to do.

Q. Did you have him report that to the C.I.O.?

A. Well, if he did report it, that is what was his job to do.

(Testimony of Charles Spallino.)

Q. You know that was his job, to report what you told him to the C.I.O.; is that correct?

A. That is right.

Q. You told him everything you did?

A. Yes.

Q. So as to keep him informed; is that correct?

A. That is right.

Q. And you didn't let any time elapse, but whenever a move was made you told him with reasonable promptness? [555]

A. Right now.

Q. Did you not?

A. The quicker the better.

Q. I beg your pardon?

A. The sooner the better.

Q. By the way, after you signed that application card in the C.I.O., when you were suffering from your industrial injury, how long was it after that that you attended a C.I.O. meeting?

A. After my accident?

Q. That is right.

A. That Sunday falls on there. That is the only meeting I ever went to around that time.

Q. It was on a Sunday; was it? A. Yes.

Q. Now, it was after you signed the C.I.O. application card?

A. That is where I got on the carpet, after that.

Q. Where did you attend that C.I.O. meeting?

A. On Slauson Avenue.

Q. At C.I.O. headquarters?

A. That is right.

(Testimony of Charles Spallino.)

Q. Did you go down there and was that a meeting of members of the O'Keefe and Merritt?

A. Yes.

Q. A special meeting for members of your shop?

A. Yes.

Q. Who were you addressed by at that time representing the C.I.O.?

Mr. Nicoson: Objected to as being immaterial.

Trial Examiner Kent: I will sustain the objection.

Mr. Nicoson: Also it assumes a fact not in evidence.

Mr. Garrett: I will withdraw the question.

Q. (By Mr. Garrett): Were the Slauson headquarters of the C.I.O. addressed by anyone representing the C.I.O.?

A. Yes, there was.

Q. The speakers there were representatives of the C.I.O.; were they?

A. That is right.

Q. And the persons in attendance were O'Keefe and Merritt employees; is that right?

A. That is right.

Q. What hall was the meeting held in? Do you recall whether it was downstairs or upstairs?

A. It was downstairs.

Q. How many were present?

A. I would guess roughly around 45, 50, I guess somewhere around in that neighborhood.

Q. This was just before you were, as you say, called on the carpet at the time you and your brother talked to Collins; is that correct? [557]

A. That is right.

(Testimony of Charles Spallino.)

Q. Who on behalf of the C.I.O. represented the C.I.O. at the meeting at the C.I.O. hall?

Mr. Nicoson: That is objected to as immaterial.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): Who spoke to the C.I.O. there?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Was Louie Ortega there? A. He was there.

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained. The answer may be stricken.

Q. (By Mr. Garrett): Was Mr. Despol there?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Did you make any arrangement at that meeting to assist the C.I.O. against the A.F.L. with anyone representing the C.I.O.?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: Did I make what?

(The question was read.) [558]

The Witness: No, I didn't take any part, that I remember, at that time. There were too many guys we had to watch out for, because the company had their men out there. They weren't all C.I.O.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): I am not asking you what you did as a result of that meeting, but did you make any arrangements there as to what you were to do?

Mr. Nicoson: Objected to as having been asked and answered.

Q. (By Mr. Garrett): Answer that yes or no.

Mr. Nicoson: Objected to as having been asked and answered. He said he didn't take any part.

Mr. Garrett: He didn't say——

Trial Examiner Kent: He may answer.

The Witness: I did not take any part, I said before.

Q. (By Mr. Garrett): I am not asking whether you took any part in any drive or not. I am asking you whether you made any arrangements to do anything when you attended that meeting at the C.I.O. hall.

A. No, I didn't make any arrangements.

Q. Did you make any agreement with anybody as to what position you were to take toward the C.I.O. in the O'Keefe and Merritt plant?

A. Yes.

Mr. Nicoson: Objected to as calling for a legal conclusion [559] of the witness; beyond his qualifications.

Trial Examiner Kent: Objection sustained.

By the way, this happened about two years ago, according to your earlier testimony, I believe, this meeting you attended?

The Witness: Yes.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Did you speak at that meeting?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Did you report back to anyone in the O'Keefe and Merritt Company what happened at the C.I.O. meeting?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: I didn't have to. I was called right away.

Q. (By Mr. Garrett): Do you recall, did you make your report?

A. I didn't have anything to report.

Q. You wouldn't tell the company anything about what happened at the C.I.O. meeting?

A. I didn't report to no company. I was called on the carpet, I said.

Q. Were you asked to report what happened at the C.I.O. meeting?

A. I was asked, yes, but I didn't have to answer it. [560]

Q. Did you refuse to?

A. Sure, I refused to.

Q. You remained loyal to the promise you made at that meeting that you wouldn't run back and tell the company about what happened; is that right?

Mr. Nicoson: Objected to as immaterial. It assumes a fact not in evidence. It is improper cross-examination.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Read that question.

(The question was read.)

Trial Examiner Kent: You may answer.

The Witness: I didn't have to report because the company had their reporters there.

Q. (By Mr. Garrett): Who were they?

Mr. Collins: I move that be stricken on the ground it is a conclusion of the witness.

Mr. Garrett: I think he can answer, if he knows.

Mr. Collins: I will withdraw the objection.

Trial Examiner Kent: The record may remain. I think you can clear that up by further inquiry.

Q. (By Mr. Garrett): Who were the company's reporters?

A. I can't recall his name. He was at the present—he has been fired for being drunk on the job and having a wreck. I can't recall his name at this present time. Maybe he (indicating) can refresh my mind on his name. He used to be in the service department. [561]

Q. All right. This man was a service department man who has since been fired for getting drunk and having a wreck; is that correct? I presume the wreck involved one of the vehicles.

A. One of the company trucks.

Q. That is right. So you can remember that much about him. Did the company have other reporters there?

A. Well, I could say others, but I wouldn't want to mention their names.

(Testimony of Charles Spallino.)

Q. Well, did they or didn't they? I am not asking you for their names.

A. Because they seemed to, you know, when you do a thing for the company sometimes you get jobs, you know, with——

Q. Nobody asked you for their names. I am asking you—you have identified one man as a reporter for the company at this meeting. Were there any others? Answer that yes or no.

A. They seemed to know everything.

Q. Answer yes or no.

A. Yes, there were other reporters.

Q. Now, let's get down to some facts. How did you know this first man, the service department man, was a reporter for the company at the C.I.O. meeting?

A. Well, he has been overheard by others, and the privileges that he had.

Q. You draw the conclusion that he was a company spy from [562] the fact he had privileges?

A. From other people. They say, "There is your reporter right there."

Q. There was some question as to whether or not that was a fact?

A. Because they never signed up with the C.I.O. They came there with the intention to find out what was going on and who was there and who spoke.

Q. You signed with the C.I.O.; didn't you?

A. Yes.

Q. But this man didn't, and so you think he was a reporter; is that correct?

(Testimony of Charles Spallino.)

A. There is a lot connected to what I thought.

Q. Did he ever tell you he was a company reporter there?

A. You think he would tell me that?

Q. Did he ever tell you?

A. Would you tell me that?

Q. Answer that yes or no.

A. No, he didn't tell me he was a reporter.

Q. Who told you he was?

A. Fellows I worked with.

Q. Who?

Mr. Tyre: I object to that, if your Honor please. I don't think this witness has to divulge the names of the persons at the plant who may be active in the C.I.O. [563]

Mr. Collins: I submit that is a perfectly proper question. This witness stated——

Trial Examiner Kent: I think there may be a treading on dangerous ground. I will sustain the objection.

Q. (By Mr. Garrett): Do you have any other reason to think this service department man was a company reporter besides what you have already told us?

A. Well, he happens to work with the brother-in-law to the lawyer. It is all a clique in that department.

Q. All right. Do you have any other reason to think he was a company reporter in that meeting? I want you to tell us all the reasons.

(Testimony of Charles Spallino.)

A. Because a man that has been drunk three or four times and still be hired and keep his job, he must be doing something other than his work.

Q. Any other reasons?

A. I have had the same offers.

Q. Any other reasons why you think this man was a company reporter?

A. How many reasons do I have to tell you? I am giving it to you plain.

Q. All right. Do you have any more reasons?

The Witness: Your Honor, he is driving on one point. I don't know what it is.

Trial Examiner Kent: Answer it. What is the difference? [564] Answer it yes or no.

The Witness: There may be a lot of reasons. Yes, there are a lot of reasons.

Q. (By Mr. Garrett): You have stated, as far as you recall now, all the reasons you thought the service man was a company reporter at the C.I.O. meeting?

A. I think I have said enough reasons that he was a reporter.

Q. You think you have said enough. But do you have any others?

A. Is there another question to that same order there?

Q. There hasn't been any objection to that question, Mr. Spallino. You are safe in answering it, if you can.

Do you have any other reasons which you have not heretofore stated why you think this service

(Testimony of Charles Spallino.)

man you have been talking about was a company reporter at the C.I.O. meeting?

A. I can't have any more reasons.

Q. Now, with respect to these other persons you suspect of being company reporters there. What is the reason that you think they were company reporters at that meeting? Tell us what the situation is.

A. The situation is that is you are playing ball, as Collins called it, that you get places. They get places. They haven't worked there as long as I have. I have worked and worked. It doesn't mean a thing. It ain't the work you [565] do, but who you do work with.

Mr. Collins: Mr. Trial Examiner, I wish to object to the conclusions of this witness.

Mr. Garrett: I move to strike the answer as not responsive.

Mr. Collins: I move all this testimony regarding company informants at the C.I.O. meeting be stricken from the record unless this witness is going to back it up with testimony of some witnesses that told him that. [566]

There is no opportunity on my part to cross-examine the witness as to who these people are and whether or not they are company employees and were company spies at the meeting, unless I have sufficient information to go on. This is the rankest kind of conclusion, conjecture, surmise. I move it all be stricken.

Mr. Tyre: I submit that the question "Why did

(Testimony of Charles Spallino.)

you believe these people were company reporters” called for the conclusion of this witness. Counsel for the company didn’t object to the question until after the answer was given and he felt that it might hurt his case in some way.

Now, if counsel for the union, Mr. Garrett, wants to withdraw his entire line, I will have no objection. As long as he continues along that line and the objection is not made to the question when asked, I don’t think it is proper for counsel at this time to move the answer be stricken after the answer is in.

Mr. Garrett: I don’t intend to withdraw this line of questioning. If this company was so ill advised as to send spies to any union meeting, I want to bring out the facts.

Mr. Tyre: I have no objection——

Mr. Garrett: This man is evading my questions.

Mr. Collins: Mr. Trial Examiner, the counsel for the C.I.O. has, on a number of occasions, said we should object to things before the answer is in. I submit that is perfectly [567] foolish. I don’t know what kind of an answer is going to be given before the answer is given. I can’t object to anything until I hear the answer.

Trial Examiner Kent: That, of course, is true in reference to some questions and not in reference to others. I think we are wasting a good deal of time on it. I can’t concede the evidence would have a great deal of weight, unless the witness is willing

(Testimony of Charles Spallino.)

to testify to names of other witnesses who would tend to support his statement. There is one thing in there and that is the fact he testified he was called shortly thereafter, after this meeting, that would lead him to believe that the company, in some way, knew he attended the C.I.O. meeting.

Now, whether it was because they had spies placed in the meeting or because somebody else attending the meeting may have voluntarily transmitted the information—I think we are wasting a great deal of time on this particular thing.

Mr. Garrett: All right.

Mr. Reed: I believe your inference that testimony that he was called would indicate that the company had other spies there is——

Trial Examiner Kent: I didn't say they had other spies there.

Mr. Reed: That he thought they did. I think it would be just the reverse. If I was called by the company to find [568] out what went on at a meeting, I think I would draw the conclusion they didn't know, otherwise they wouldn't have called me, if they had other spies there. I believe that would be my conclusion.

Trial Examiner Kent: I think that is largely a question for argument by counsel.

Mr. Collins: May I have an expressed ruling? Are we going to be permitted to find out who told Charles Spallino that somebody, who was discharged for drunk driving in the service department, was a company spy at the meeting? Are we

(Testimony of Charles Spallino.)

permitted to have that, or are we not? In the event we don't have it, may I have a ruling on the entire line of testimony, asking that it be stricken.

Trial Examiner Kent: Yes, I think that is a fair proposition, in view of the testimony.

Mr. Smith: Your Honor, I think the testimony is quite material and should stay in. And furthermore, I think it is very strong evidence and indicative to you, as the Trial Examiner, and anybody else that reads the record, that this witness is coming before this Examiner, requesting that rules be made in conformance with what he says and what others will be presented here say.

The fact he is evasive and not desirous of letting this Examiner know all the facts is something which would be weighed very heavily against him. I think the record should stand, to [569] show those facts, to show this witness has been asked very simple questions, questions which he could have answered but that he desires not to for some reason which he doesn't want to explain to the Examiner, nor to opposing counsel.

Mr. Tyre: I object to counsel characterizing the witness' testimony. It is certainly improper for counsel to do that, and he ought to be reprimanded. It tends to intimidate the witness.

Trial Examiner Kent: We have to be realistic. There is no question about it. All witnesses are prone to testify as to conclusions.

Mr. Smith: I think, furthermore——

(Testimony of Charles Spallino.)

Trial Examiner Kent: They probably, in good faith, believe conclusions are made on sound ground. Other people may not agree with that.

I do think that the testimony in the record now isn't entitled to a great deal of weight. There is one fact there, one fact that—of course, I am letting my hair down and speaking for the benefit of counsel—one fact that is that he was called into the company, according to his testimony. I am not finding that as a fact, according to the present record. He was called shortly thereafter. That, of course, indicates the company must have known—if his testimony were true he was called in—that there was such a meeting.

Now, I don't know that this testimony should bother [570] counsel on either side a great deal. I think the testimony, standing as it is, just purely is his conclusion and not supported by giving the names of other witnesses who he said intimated to him that certain people were spies. I don't think that that is entitled to very much weight, and upon which to support a finding.

I would hesitate to make a finding on that sort of testimony. Aren't we wasting a lot of time on this particular thing?

Mr. Collins: Mr. Trial Examiner, in view of what you said, I don't know whether it is necessary for me to make these remarks or not. It is not at all an uncommon occurrence, as you, from your experience, know, for other people who attend union

(Testimony of Charles Spallino.)

meetings to state that to their employers or their friends that so-and-so, and so-and-so were there. They are not necessarily spies.

Trial Examiner Kent: We have to look at this thing realistically. We are not children. In a meeting of that sort any one of the group might very well be friendly with the foreman and tell him he went to the meeting and how many were there, and one thing or another.

Now, that man wasn't necessarily—and there is no inference he was sent there—to find out that information. He is just one of these boys that opens up freely. I think, if the Board wanted to show there were spies there, they would [571] put in more evidence than is presently in. Now, if you want to delve further, it is up to you gentlemen.

Mr. Garrett: I notice the hour is 11:00 o'clock. Will we take the morning recess, your Honor.

Trial Examiner Kent: We will take a five-minute recess, yes.

Mr. Garrett: May it be ten minutes, your Honor? I have some instructions to send down.

Trial Examiner Kent: Very well.

(A short recess.)

Trial Examiner Kent: You might proceed.

Q. (By Mr. Garrett): I take it, then, Mr. Spallino, that you do not care to identify the other persons at the C.I.O. meeting who you think were company reporters, by name.

A. That is right.

Q. How many of them were there besides the

(Testimony of Charles Spallino.)

man you think was a company reporter from the service department?

A. Oh, there was a couple of them, anyway.

Q. Two men. Will you state what departments, if you know?

Mr. Tyre: I object.

The Witness: Departments?

Trail Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Will you state why you think those men were company reporters?

Mr. Tyre: I object, asked and answered.

Trial Examiner Kent: I will take the answer. You can answer.

Q. (By Mr. Garrett): Why do you think they were company reporters?

A. Well, the privileges they had there, and by other fellows reporting it to me, to watch out for those guys.

Q. Any other agents? A. No.

Q. The answer is no? A. That is right.

Q. When you went to Collins' office with your brother after the C.I.O. meeting, did anybody ask you in Collins' office what happened at the C.I.O. meeting?

A. No, they asked me what I was doing at the C.I.O. meeting, what reason did I have to go.

Q. Did anybody ask you in Collins' office at that time what happened at the C.I.O. meeting?

A. Not that I can remember.

Q. Did anybody in Collins' office at that time

(Testimony of Charles Spallino.)

tell you they knew what happened at the C.I.O. meeting?

A. They knew who was there, yes.

Q. Did anyone tell you that they knew?

A. This was a conversation. I can't—I didn't intend to have a hearing here and I didn't take notes. I can't remember everything, who said and what said. I know I was taken over on the carpet and I was told why was I at the C.I.O. meeting and what reason did I go there for, and why I shouldn't go any more. I had been a bad boy. That is all I can tell you.

Q. All right. Now, you can tell me this: Whether or not anyone told you at that meeting that they knew what happened at the meeting?

A. I don't remember.

Q. You don't remember whether somebody told you or not, is that right? [57]

A. That is right.

Q. But you do remember that nobody asked you what happened there?

A. No one asked me what happened there.

Q. As a matter of fact, Mr. Spallino, when you were engaged in your activities in circulating these cards in October and November, 1945, you were interested in helping get the company off the A. F. of L. unfair list, were you not?

Mr. Tyre: I object to that.

Mr. Nicoson: Asked and answered and we have exhausted that subject.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I think the inquiry has been quite extended heretofore on that.

Q. (By Mr. Garrett): Did you ever work for Pioneer Electric Company? A. No.

Q. Do you know whether that meeting of the A. F. of L. representatives in Mr. Collins' office was for the purpose of organizing O'Keefe and Merritt or for the purpose of organizing Pioneer Electric?

A. At that time there was no Pioneer Electric, that I can recall.

Q. This was, then, sometime in October, is that correct?

A. I would say October. I don't know whether it was October or November. It was around that time. [575]

Q. It would be either October or November, is that correct? A. Yes, sir.

Q. And you didn't know about any Pioneer Electric Company until after the election, is that correct?

A. Yes, after the election I heard about Pioneer Electric Company.

Q. When did you first hear about Pioneer Electric Company?

A. That was before this, when the war broke out and they started to build generators there for the Pioneer Electric.

Q. Some of the men received pay checks from the Pioneer Electric and other parts of the opera-

(Testimony of Charles Spallino.)

tion they received checks from O'Keefe and Merritt?

A. That was that closed area, that was Pioneer Electric during the war.

Q. You never worked for them? A. No.

Q. Did you ever get a pay check from Pioneer Electric? A. Never.

Q. Who signed your last pay check, what company?

A. O'Keefe and Merritt has signed all my checks.

Q. You are an O'Keefe and Merritt man?

A. I was until—I have not been back there since.

Q. Since you started testifying in this hearing.

A. That is it.

Q. All right. Now, after this meeting down at Slauson and [576] Avalon at the C.I.O. Hall, which you have told us about, before you went up to Mr. Collins' office, when is the next time you went to a C.I.O. meeting?

Mr. Tyre: Just a minute. So the record will be straight, he did not testify that he ever went to a meeting at Slauson and Avalon. He said it was on Slauson.

Mr. Garrett: I believe that hits a new low, that objection. I have been practicing law for 25 years, and that one is a prize.

Mr. Tyre: It so happens, your Honor—I don't want Mr. Garrett to use this as a means of impeaching this witness. It so happens that there are two C.I.O. buildings. There's the Steelworkers which

(Testimony of Charles Spallino.)

is down on Slauson a couple of miles from another C.I.O. meeting place at Slauson and Avalon. I don't want Mr. Garrett later to say that this witness changed his mind about where that meeting was. There is nothing low about it. I think it is a perfectly proper objection, the question assumes a fact not in evidence.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Garrett): Where was the C.I.O. Hall on Avalon that you went to? A. What?

Mr. Nicoson: Objected to. He didn't say it was on Avalon. That is what the whole trouble is about. He said it [577] was on Slauson.

Mr. Garrett: The Board's attorney knows where the C.I.O. is better than I do.

Mr. Nicoson: You bet your life. I have been down there and held elections in that particular C.I.O. Hall, under the Smith Connolly Act.

Q. (By Mr. Garrett): Where was this C.I.O. Hall you went to besides being on Slauson?

A. It is closer to Atlantic. I don't know it is the Steelworkers. I don't know the address.

Q. Isn't it the present headquarters of the union you belong to? A. That is right.

Q. Where Mr. Despol has his office?

A. Yes.

Q. Did he have his office here then when you went there? Did he have his offices then when you went to the meeting there just before you talked to Collins and your brother?

A. I didn't know then.

(Testimony of Charles Spallino.)

Mr. Tyre: Object to that question. There has been no proper foundation laid.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Mr. Tyre: I don't think he has laid a foundation, your Honor, as to what this witness knows about the location of the [578] officers or who had offices in that building.

Mr. Collins: He is getting far afield. I never heard of the necessity of laying a foundation on cross-examination, except to impeach the testimony of a witness thereafter.

Trial Examiner Kent: He may answer, if he knows.

The Witness: I didn't know John Despol at that time.

Q. (By Mr. Garrett): You didn't know Despol at that time. Did you know any C.I.O. officials at at that time? A. I did.

Q. Who?

A. Gilbert is all I know him by. I don't know his last name, Neifer, or something. I can't pronounce his last name.

Q. Was he a man that was organizing the O'Keefe and Merritt plant at that time for the C.I.O. Steelworkers? A. That is right.

Q. Was he at the meeting?

A. He was at the meeting.

Mr. Nicoson: If I had had any idea that was

(Testimony of Charles Spallino.)

what you were shooting at, I would have stipulated with you an hour and a half ago.

Q. (By Mr. Garrett): What is the next time you were in that hall?

Mr. Nicoson: If he was.

The Witness: Oh, after the election.

Trial Examiner Kent: By the election what do you mean, [579] the election of November, 1945?

The Witness: The November election, that is right, government election. That is the government election.

Q. (By Mr. Garrett): Did Mr. Roberts want you to sign up more Stove Mounters there than Mr. Collins told you to sign up?

A. Yes, he did. He had——

Q. Mr. Collins only wanted you to sign up about 25, is that right? A. 50, 25 of each.

Q. How many did you ultimately sign up?

A. Altogether?

Q. Yes. A. About 85.

Q. Did Mr. Collins object to that?

A. Oh, well, he said—no, there was nothing he could do about it.

Q. He was helpless?

A. To go ahead and do it. Yes, he was helpless, sure he was.

Q. Those 85 you signed up, that was about a sixth of [580] the men that were working for O'Keefe and Merritt at that time, wasn't it?

A. How was that?

Q. The 85 people you signed up was just about

(Testimony of Charles Spallino.)

a sixth of what was working for O'Keefe and Merritt at that time, was it not?

A. Well, I'm not very good at figures.

Q. There were about 500 working there on production at that time for O'Keefe and Merritt, wasn't there?

A. No, there wasn't that many.

Q. Approximately how many?

A. Around 300, I guess, somewhere in that neighborhood.

Q. When you went around to get these turkeys signed up and presented the A. F. of L. cards at the same time, did you tell the turkey purchasers and union applicants anything about the unfair list?

A. Well, what I told them, that we had to get off the unfair list, yes, and when the election time came you could vote the way you felt like at that time, you still had time to change your mind and vote whatever you wanted.

Q. That was the policy of the Five and Over Club at that time, was it not? The company had to get off the A. F. of L. unfair list so that it could give employment to the Five and Over members, is that right?

A. The policy of the Five and Over Club was that we wouldn't [581] have anything to do with the company at all. That was our own affairs, whatever the Five and Over Club did, that was the understanding.

(Testimony of Charles Spallino.)

Q. So if the Five and Over Club tried to help get the company off the unfair list, it was because that was the club policy, not because the company wanted that?

Mr. Tyre: I will object to that, calling for a conclusion of the witness.

Mr. Smith: That is a conclusion which this witness can make. He was an officer of the club.

Trial Examiner Kent: He was president at the time. He can state it. Answer that.

The Witness: As far as the membership, they didn't know what was going on. It is the officers' affair. We were in office to look out for the fellows, and anything that the company wanted us to do, so far as the members was concerned, I didn't answer for anything that might have happened. It was up to me to either take care of my members or dictate to them.

Q. (By Mr. Garrett): You mean by that, it was the officers of that club rather than the membership who agreed on the policy, is that right?

A. I never did agree to any policies.

Q. Well, you talked to the other officers.

A. I worked my club the way it was supposed to be. [582]

Q. You were not a czar, were you, you were not a Hitler? A. That is right.

Q. You consulted with the other officers, didn't you?

A. My other officers, as far as their contacts,

(Testimony of Charles Spallino.)

they were in the office and all they did was the bookkeeping.

Q. You worked in agreement with them, didn't you?

A. They worked in agreement with me.

Q. Did you ever make any money off operating that lunch stand?

A. Did I make any money? No, not a cent.

Q. You just gave your services as president of the club and did all that work?

A. That is right. You got a pat on the back at the end of the year.

Q. Just for a pat on the back?

A. That is right.

Q. Did you ever have the accounts of that lunch stand audited?

A. Well, I didn't this time for the simple reason that when I took office I was handed an audited report from the officer that was leaving, and it cost twenty one dollars and some odd cents to have that audited, and when we went over it our new officers there, they were \$700.00 in the deal short, they owed beer way back in July, so we was going to have it straightened out by going to another auditor, and I brought [583] it up to Mr. O'Keefe and he looked at it, and I brought it to a fellow that was working for Pioneer at that time, his name is Sam Platts, and I let him go over it and he said that auditor's report wasn't worth 50 cents. Then I showed it to Mr. O'Keefe and he put it in his pocket and carried it around a couple of days, and then he brought it back to me and told me, he says, "Well, Charlie,

(Testimony of Charles Spallino.)

why don't you just forget about the thing? It is going to cost money and forget about the whole story." And he says, "You don't want to put him in jail, you don't want to prosecute him, do you?" He says, "Forget the whole thing." So when I got office. I was busy and I was clear and plenty of money in the bank, and it was—the same treasurer is still in office that was with me, he was re-elected, so we saw that we didn't have to spend any money foolishly and even if I was crooked or otherwise, still, they would not have prosecuted me, anyway, so that we saved that \$20.00 or whatever it is for an auditor's report.

Q. Charles, who stole the \$700.00, do you know?

A. I don't accuse anybody of stealing it.

Mr. Tyre: I object.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Charles, so that you did consult your fellow officers and did not determine the Five and Over Club policy all by yourself without consultation with the [584] other officers, did you?

Mr. Nicoson: Object to that as having been asked and answered about 15 times.

Mr. Garrett: What is his testimony?

Q. (By Mr. Garrett): Were you the Five and Over Club?

A. Objected to for the same reason.

Trial Examiner Kent: He may answer.

The Witness: I was the president of the Five and Over Club.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): How many other officers did it have at that time?

A. At one time we had a secretary and treasurer, but since Cole took office, he cut one office down and he had one man take care of secretary and treasurer, and it was kept that way. They have a vice president, a vice president who is not in the plant. He is an experimental men where he is out of the plant, and when he is in the plant he is so darn busy that you can't get hold of him, so we work this between the treasurer and myself.

Q. Who was the treasurer?

A. Bill Walker was the treasurer and secretary.

Q. Did they have an executive committee?

A. No.

Q. Do you have any directors?

A. No directors. [585]

Q. Do they have any committees besides this grievance committee?

A. At one time we had an entertainment committee, and they failed, I had to do even all the entertainment committee work.

Q. So you and Mr. Walker between membership meetings determined the policy of the Five and Over Club?

A. He handled the money and I handled the situation.

Q. As far as your policy was concerned in October and November of 1945, it was to help get the company off the A. F. of L. unfair list, was it not?

Mr. Nicoson: Objected to as having been asked

(Testimony of Charles Spallino.)

and answered about 15 times, and serves only to clutter the record.

Trial Examiner Kent: I think the record is about as clear as you can get it on that from this witness, at least.

Mr. Garrett: I take it the objection is sustained, then, your Honor?

Trial Examiner Kent: Yes, I will sustain the objection.

Q. (By Mr. Garrett): On the interview when you told Mr. Roberts of the Stove Mounters that you had 138 cards and he read you the Gaffers and Sattler's wage scales, did he make representation to you that he would get the O'Keefe and Merritt employees the same wage scales as Gaffers and Sattler had? [586]

A. He couldn't do otherwise. He would have to give us the same as the other stove manufacturers.

Q. At that time he told you that he couldn't do otherwise, you would have to get the same as Gaffers and Sattler?

A. What he did say, if you ask me, well, that is what the companies have been paying, if they want to pay you more it is up to them, but this is the scale.

Q. Did you look at those Gaffers and Sattler wage scales?

A. Well, it was not correct yet. They were still being worked on at that time.

Q. Did he tell you what they were?

(Testimony of Charles Spallino.)

A. What he thought they were, yes, what they were going to be.

Q. Did you tell him it was a good idea to have these minimum wage scales in effect at O'Keefe and Merritt?

A. I told him that some of the fellows were making more than that.

Q. What else did you tell him about Gaffers and Sattler wage scales?

A. What else did I tell him, or did he tell me?

Q. What else did you tell him? A. Him?

Q. Were they too low? Were they too high? What did you tell him about them?

A. I didn't know anything about Gaffers and Sattler or [587] anything, I didn't tell him anything, only just listening to him.

Q. You have been working in the stove business in this town for 19 years, haven't you?

A. Oh, I have been on the refrigeration end.

Q. You have heard all about Gaffers and Sattler, though, haven't you?

A. I have heard of them, yes, sir, for years.

Q. You knew they were a big factory in the stove business?

A. We were bigger than they were.

Q. You knew they were an important competitor of your employer, were they not?

A. I don't know. I have seen Mr. O'Keefe walk around with Gaffers and Sattler right in the plant, when we were still organized. I think it was just a

(Testimony of Charles Spallino.)

little after the election, he had Mr. Gaffers walking around through the factory with Mr. O'Keefe.

Q. How long have you known Mr. Gaffers?

A. I am not in the position to go out with him, or anything, but I have seen him. I have not been acquainted with him.

Q. How did you know it was Mr. Gaffers that Mr. O'Keefe was walking through the plant with there?

A. In the department somebody knew and said that is Mr. Gaffers, said maybe he is going to buy the place. How should I know? [588]

Q. Did you hear that Gaffers and Sattler were going to buy the place?

A. No, I didn't hear they were going to buy it. There had been talk that the company was going to sell.

Q. Did Roberts tell you that the fellows at Gaffers and Sattler were getting better wages than you were?

A. No, he didn't say that.

Q. He showed you the wage scale that you were expecting to get there?

A. That is what they wanted to get.

Q. Did you tell him you wanted that wage scale in your plant or you didn't want it?

A. I didn't tell him anything.

Q. Do you know what Frank Doyle's payroll classification is?

A. Frank Doyle's classification, all I know he is a clerk in the service department.

Q. Is that the refrigeration department?

(Testimony of Charles Spallino.)

A. Well, they service stoves and refrigerators there.

Q. Is it the service department for refrigeration that he works in?

A. It is stoves and refrigeration, I said.

Q. How long have you known Mr. Bennett?

A. I have known him since about '39 or '30.

Q. Is that William T. Bennett?

A. William T. Bennett. [589]

Q. What is his present position?

A. Well, last I heard he was shop steward. That is what he told me last time I talked to him.

Q. Shop steward of what union?

A. Of the A. F. of L.

Q. Does he put in full time doing that?

A. I don't know. He seems to be bossing around there, putting men to work, gives orders.

Q. Does he do any work for the company, too?

A. How?

Q. Does he do any work for the company, too?

A. Well, I think the company pays him. He gets an O'Keefe and Merritt check. I don't know what else he does there outside of bossing.

Q. At the time you went in to get this 16 cards, did you know what his position with the company was?

A. Sure, I did.

Q. What was it?

A. Same thing I'm telling you now.

Q. Shop steward?

A. No, he was a boss. He could tell me what to do and I would have to do it. I don't know what else

(Testimony of Charles Spallino.)

I could do. That is, if I was working in his department. They can change the capacity of his, whatever it is I don't know.

Q. Who was the superintendent of the refrigeration department [590] at that time?

A. Probably Collins, Cecil Collins here, for all I know. He said he is the boss of that department.

Q. Who is the No. 2 man in that department, if you know? A. Bill Cole.

Q. Mr. Collins' brother-in-law, is that right?

A. That is right.

Q. Mr. Collins knows that department because he worked there as an employee before he became an attorney, is that correct? A. Yes, sir.

Q. So he naturally is interested in the department on account of his brother-in-law, is that correct?

Mr. Nicoson: Well, I submit that calls for a conclusion.

Mr. Garrett: Withdraw it. All right.

Q. (By Mr. Garrett): You just named Mr. Cole. Who is the next man under Mr. Cole?

A. William T. Bennett is, as far as I know.

Q. Do you know what his title is?

A. If I tell you his title it will be changed. He told me he was the shop steward the last time. He is still my boss, telling me what to do, so I think I made that clear.

Q. You don't know anything about Bennett's classification or title except that he is a shop steward, is that right?

(Testimony of Charles Spallino.)

A. He has got authority to tell you what to do, if you are [591] working for him in that department.

Q. Do you know whether he has any authority to hire or fire?

A. As far as hiring and firing, I think there is only one person in there that can do hiring and firing.

Q. Is that Cole or Collins?

A. No, that is between Bill O'Keefe or Fred Rotter. I think they are the only two that does the hiring and firing.

Q. Did you go in with Mr. Bennett and Mr. Doyle when they took these cards in to the refrigeration department? A. No.

Q. Where did you go while they were inside?

A. I stayed at the railing there in the hallway going into the service dispatcher's office, inside of the whole service department.

Q. You stayed outside by the railing?

A. By the railing.

Q. Could you see inside from where you stood?

A. Inside the service department, yes.

Q. How much of the service department could you see from the position at which you stood?

A. Well, I could see quite a ways down the line there. I could see two or three fellows along the work bench.

Q. Could you see any more than two or three fellows from where you stood? [592]

(Testimony of Charles Spallino.)

A. No, because there is a lot of things around there.

Q. Did you see Mr. Bennett take a card to any man inside of the service department?

A. No. I seen them disappear and they came back within 15 minutes and handed me these 15 signatures.

Q. That was 16, wasn't it? A. 15 or 16.

Q. It is not a fact, then, that you saw the men sign the cards in the presence of Mr. Bennett?

A. No, I didn't follow them in there.

Q. And if you have previously given testimony to that effect, you saw the cards signed, that is mistaken, is that correct?

A. Well, I guess that will be mistaken. Anybody can make a mistake, I suppose.

Q. What did you call this room where you went with Roberts and Levascos after you handed Roberts the application blanks, why did you call that the torture room?

A. Well, that is for the fellows that have any authority, the torture room, what I mean is because they don't torture persons up in this room, of course, but they got and took me up there, this is what I meant, that is the room where they can be there and everybody there has authority to use this room, you can have all the loud talk or anything else you want without any interference with anybody. [593]

Q. So rather than being a room called a torture

(Testimony of Charles Spallino.)

room, it is a room that the general officials or whoever would have a key could use, is that right?

A. Yes.

Q. It is the sort of a room that is free for use by everyone?

A. It is for the young men, anybody wants to be alone to talk secrecy or otherwise. [594]

Q. Is that room referred to by anyone else by the name of torture room, or was that just your error on the stand?

A. That was my way of saying it, that is all.

Q. When you talked to Mr. O'Keefe, just before the election, and told him you had gotten the 85 signatures for the A.F.L., that was when you were on your way to the shipping department? You remember the morning the Teamsters had that meeting? You remember that; don't you?

A. Yes.

Q. Did you report that interview to Louie Ortega? A. I did.

Q. The same day?

A. Not the same day. I didn't see him the same day.

Q. Do you recall about how long Louie Ortega has worked for the O'Keefe & Merritt Company?

A. I would say 14, 15 years; maybe longer. I don't know.

Q. Is he a welder?

A. He has been a welder?

Q. Do you know whether he has ever been an upholsterer?

(Testimony of Charles Spallino.)

A. We don't have any upholstering in our plant. I didn't know him before I went into the plant.

Q. In that meeting between Levascos and yourself and D. P. O'Keefe about a month before you met Roberts, when O'Keefe told you, "We want to get off the unfair list of the A.F.L.," did he tell you why he wanted to get off? [595]

Mr. Nicoson: That is objected to as having been asked and answered many, many times.

Mr. Tyre: I object. It assumes a fact not in evidence, namely, the meeting with Roberts was one month after the meeting with Collins and Levascos. I don't think there was any such testimony.

Trial Examiner Kent: It seems to me that is right. You might reframe the question.

Mr. Garrett: I will reframe the question.

Q. (By Mr. Garrett): You testified that you had a meeting with D. P. O'Keefe about a month before the meeting with him, when you were on the way to the shipping room there, where you told him you had secured the 85 signatures. You further testified in that early meeting, the month previously, he told you that he wanted to get off the unfair list of the American Federation of Labor?

Mr. Tyre: I object to that as a double-barreled question. He can't answer yes or no, unless he answers both at the same time.

Trial Examiner Kent: Read the question.

(The record was read.)

Trial Examiner Kent: I think the witness may answer, if he understands the question.

(Testimony of Charles Spallino.)

The Witness: That is a pretty long question.

Mr. Nicoson: Do you understand it? [596]

The Witness: No, I don't understand it. It is so long.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Do you remember the first meeting with D. P. O'Keefe, when Levascos was there, and O'Keefe told you he wanted to get the company off the unfair list?

A. The first meeting he was talking about we had to get in the union. That we had to go——

Q. Levascos asked him——

Mr. Nicoson: Wait just a minute. Let's get the answer.

Q. (By Mr. Garrett): Go ahead. Tell us what was said.

A. That we had to join a union, in order to sell our stoves up north, that we had to get in a union in order to sell this goods, and the A.F.L. was preferable. They would prefer the A.F.L. to the C.I.O., because the C.I.O. is radical. They were asking something they couldn't give.

Q. Was Collins there at that time?

A. No; he told us to talk to Collins, Collins would tell us—we would work under Collins; that he couldn't make no statement.

Q. I think you have testified before that in this interview, when he told you to go see Collins, he said he wanted to get the company off the unfair list. Do you remember that being said? [597]

A. I am likely to say anything, the way you are

(Testimony of Charles Spallino.)

bringing those questions over and over again, over and over. I think I have answered them three or four times. I am not used to being up here and shot at like this. This is my first hearing. This is the first time I have sat four days at a place like this. I am used to working for a living.

Trial Examiner Kent: Mr. Witness, on cross-examination counsel have a lot of lattitude. Their conscience has to be their guide. I hope they have a lot of conscience.

The Witness: If I even had a book of information, to kind of break in on what procedures is of these hearings. I notice they have written transcripts and all kinds of things to work off of. I have my head, and so many things transpired, your Honor.

Trial Examiner Kent: Do the best you can.

Q. (By Mr. Garrett): You have remembered certain things about that interview. You have testified about them. I made notes here with a pencil while I listened to you talk when you were being questioned by Mr. Nicoson. I understood you to say, when you first testified about this interview, under Mr. Nicoson's guidance, that in that interview Mr. O'Keefe told you he wanted to get off the unfair list of the American Federation of Labor. Is that or is it not correct?

A. He told me that several times, yes.

Q. One of the times he told you that was in that particular [598] interview, is it not?

A. It could have been.

(Testimony of Charles Spallino.)

Q. Might have been, you say?

A. Might have been.

Q. Do you recall whether he told you in that particular interview why he wanted to get the company off the A.F.L. unfair list?

A. I don't think he went into details.

Q. Did he ever, in any of the conversations with you, tell you why he wanted to get the company off the A.F.L. unfair list?

A. All I know is he wanted to spread out his business. He wanted to go up north, and he wanted to have the A.F.L. labor.

Q. And did he tell you he couldn't spread his business out into the north if he didn't have the A.F.L. labor?

A. He probably put it that way.

Q. Did he give you to understand that?

A. No, he didn't make me understand anything, because he said to see Collins, that Collins would take over from there.

Q. Did Collins tell you why he wanted to get the company off the A.F.L. unfair list?

A. Because we were on the unfair list.

Q. Well, did he tell you why he didn't want to stay there? A. The way he framed——

Mr. Nicoson: Your Honor, I am going to object to this as having been asked and answered. We have gone over and over and over and over this. I submit there is a limit even under cross-examination which counsel can go to in repeating questions that have been previously put and previously answered. I

(Testimony of Charles Spallino.)

submit this is one of them. He has asked this not only once but many times. I object to it on that ground, as having been asked and answered; cluttering up the record.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: I am sorry if my recollection of the record on the point is not so clear. I will let the answer be taken.

The Witness: Well, like I say, he was wanting these 50 applications to get off that unfair list, 25 Five and Over members and 25 non-members. The weak ones, the ones that were reasonably led; that we could lead them.

Q. (By Mr. Garrett): That was how he proposed to do it?

A. That was how he proposed to do it.

Mr. Nicoson: I submit, your Honor, that even that answer should suggest to you we have been over that about 15 times.

Trial Examiner Kent: I recollect substantially that is the testimony.

Mr. Nicoson: Objected to as having been asked and answered. [600]

Mr. Garrett: I don't think the answer is responsive.

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: I am going to ask the question again.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Did Collins ever tell you why—not how—but why he wanted to get off the A. F. L. unfair list?

Mr. Nicoson: Same objection; repetition.

Trial Examiner Kent: The answer may be taken.

The Witness: Well, we had to get off the unfair list, in order to sell our goods.

Q. (By Mr. Garrett): Did Collins tell you that? A. Yes, he said that.

Mr. Nicoson: You see, that is about the fifth time that same question and same answer have gone in.

Q. (By Mr. Garrett): Now, when you got the cards from Mr. McMurry, the Machinists' application cards, where did you give them to Bud Daley?

A. I didn't give them to Bud Daley.

Q. Whom did you give them to?

A. Levascos.

Q. I see. Do you know what Levascos did with them? A. He gave them to Bud Daley.

Q. Did you see him? A. No.

Q. How do you know?

A. Bud Daley handed me the cards and said he couldn't get [601] rid of them.

Q. When you were at that meeting in the office of Mr. Collins with the A.F.L. representatives, did they tell you whether they were there to negotiate about O'Keefe and Merritt or about Pioneer Electric?

A. They didn't say anything about Pioneer Elec-

(Testimony of Charles Spallino.)

tric or about O'Keefe and Merritt. We were just talking union there.

Q. This leaflet that you took up with Mr. Collins, who wrote that?

A. I didn't take it up to Mr. Collins.

Q. You took it up with him, didn't you? You discussed it with him?

A. Mr. Collins had the leaflet himself.

Q. Where did you first see it?

A. In Collins' office.

Q. Did you read it? A. Not truly.

Q. Was it typewritten? A. Typewritten.

Q. Now, after you took it to Mr. O'Keefe, later on that day, did Mr. O'Keefe keep it or did you take it away with you?

Mr. Tyre: Objected to as assuming a fact not in evidence. He never testified he gave that leaflet to Mr. O'Keefe the same day. The testimony was it was the next morning. [602]

Trial Examiner Kent: Reframe the question.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Did you take the leaflet from Mr. Collins' office? A. Yes.

Q. Levascos was with you; is that right?

A. That is right.

Q. Was it typewritten or handwritten?

A. Typewritten.

Q. Did you retain any copy of it?

A. There was only one copy.

Q. What did you do with that copy?

A. I handed it to Mr. O'Keefe the next morning.

(Testimony of Charles Spallino.)

Q. After O'Keefe had it, did you ever see it again? A. Never.

Q. Do you know who wrote that leaflet?

A. I don't know who wrote it. Collins had it on his desk.

Q. Now, on the day of the election, about this speech, was that speech dictated in your presence?

A. What speech is that?

Q. The speech you didn't make on the day of the election. A. That is right. It was.

Q. Who dictated it? A. Collins.

Q. Who to? [603]

A. Well, he dictated it to Johnnie Levascos.

Q. Who took it down?

A. It wasn't in writing. He didn't write it. He just put the words in our heads. I didn't even listen to him.

Q. No speech was dictated then, you just had a conversation about a speech; is that correct?

A. Yes. He was dictating the speech of what to say.

Q. Nobody was dictating to somebody else, who was sitting there writing; is that a fact?

Mr. Tyre: I object. It has been asked and answered.

Trial Examiner Kent: I think the record is clear. Counsel means he didn't dictate it to a stenographer, he told you what to state?

The Witness: Yes. In words he spoke what he said, and Johnnie made the speech himself. Johnnie made a boner in his speech when he mentioned that,

(Testimony of Charles Spallino.)

"I just got through talking with Collins just a half hour ago."

There was a certain Raviola there and said, "Why didn't Collins come here himself?" There was a big commotion in the floor on account of that.

Q. (By Mr. Garrett): Levascos told them he had just come from Collins' office?

A. Levascos made that statement in his speech, "I just got through talking with Cecil Collins about a half hour ago," and that started a big commotion in the audience.

Q. Do you recall anything that was said about how the speech originated?

A. How the speech originated?

Q. Yes.

A. In Collins' office, we were called up there.

Q. You didn't have anything to do with preparing that speech?

A. No, I didn't want no part in it at all. In fact, I was asked if I was scared.

Q. In the beginning you agreed to make a speech on the subject of whether the members should go for the A.F.L. or the C.I.O.; didn't you?

A. No. I agreed to speak to them because I had to open the meeting as the president. I would tell them my own feelings, my own impressions. That I would make no speech.

Q. After you and Levascos left Collins' office to go out for a drink before the meeting, did you then get in touch with Louie Ortega?

(Testimony of Charles Spallino.)

A. No, I didn't have a chance to get hold of him.

Q. Did you get in touch with the C.I.O.? [605]

A. About the meeting?

Q. That is right.

A. No, not that I can recall at this minute.

Q. You were telephoning the C.I.O. occasionally along about that time?

A. No, I never did use the phone once to call the C.I.O. I will swear that on the Bible or on my cross.

Q. You didn't phone from the company telephone?

A. I never used a public telephone, that is, the company phone, to call the C.I.O.

Q. Did you use the telephone at this bar where you went with Levascos before the meeting, to call the C.I.O.?

A. No.

Q. Did you telephone them?

A. What?

Q. Did you telephone them?

A. I have never telephoned before that time, didn't have to. The foremen went around plenty times to tell them about the speech.

Q. About the meeting, you mean; is that correct?

A. Yes.

Q. At the election you say you acted as an observer for the Stove Mounters?

A. Yes; forcibly.

Q. Well, now, just what do you mean? [606]

A. I had refused it. On the last minute Roberts and one of the government agents there came and told me, said, "You are going to be an observer."

(Testimony of Charles Spallino.)

I said, "I told you I didn't want to be an observer."

They pinned a button on me and gave me a list of names to check.

Q. Were you the only observer for the A.F.L. at that election? A. No, sir.

Q. Who else was observer for A.F.L.?

A. I don't remember who they all were. One, that was alongside of me, McNitch or Mac something, a fellow in the machine shop. I don't remember his name.

Mr. Nicoson: I think, if it is important, counsel, the official records of the Board will indicate who the other observer was.

Q. (By Mr. Garrett): You were the one, then, who had to decide whether any votes would be challenged for——

A. No, I didn't challenge any votes. All I did was keep the chart, the list of names, to check, they voted or not.

Q. You didn't make any challenge; is that right?

A. I did not.

Trial Examiner Kent: We might recess at this time until 2:00 o'clock.

(Whereupon, at 12:10 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [607]

(Testimony of Charles Spallino.)

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: All right, Mr. Spallino. You might resume the stand. You might proceed, Mr. Garrett.

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Cross-Examination

(Continued)

Mr. Garrett: May I have the last question and answer read, please?

(Question and answer read.)

Q. (By Mr. Garrett): How long after the election was it that you were displaced as president of the Five and Over Club?

A. Let's see, the election was in November. January.

Q. 1946? A. Yes, sir.

Q. Are the elections in the Five and Over Club always held in January of each year? A. Yes.

Q. They are yearly are they?

A. Yes, once a year.

Q. At the time you and Mr. Levascos and Mr. Collins were talking about the speech to be given at the Five and Over Club [608] meeting on election day, that is the day of the NLRB election, did you see anybody make any notes at that time?

(Testimony of Charles Spallino.)

A. The day Johnny and I was at Collins' office?

Q. That is right.

A. No, I didn't see anybody take notes.

Q. Did anybody speak at the Five and Over meeting on the day of the N.L.R.B. election besides yourself and Mr. Levascos? A. No.

Q. Did Mr. McMurray tell you the name of the employee in the machine shop who was claimed as a member of the machinists?

A. He did, but I don't remember his name.

Q. Were you putting in your time at the lunch stand on that day? A. On election day?

Q. That is right.

A. I believe I was. I am not sure.

Q. At that time were you assigned to any department of the company?

A. I was. I had permission to be away from it.

Q. What department of the company were you assigned to?

A. Well, it is the drill press department.

Q. When had you last been there prior to the day of the N.L.R.B. election, how many days previous? [609]

A. Oh, I don't remember the exact day.

Q. Did you spend any time in the drill press department during all the time you were circulating these cards? A. I suppose I did.

Q. Who was your foreman there?

A. Well, it started off with Tony Rozas, and he was my foreman for a little while, and then

(Testimony of Charles Spallino.)

Frank Vacquero took over. Before that I worked for Bill Wheeler in the generator department.

Q. When were you transferred to the drill press department?

A. Oh, I don't remember the date.

Q. Was it after or before you first met Mr. Roberts of the Stove Mounters?

A. I think it was after I already had moved—I mean after. I had already moved before I spoke to Roberts, before I had any meetings with Roberts.

Q. From the time you moved to the drill press department, up to the day of the N.L.R.B. election, had you actually done any work in the drill press department?

A. Well, I was on a mill, mill machine there. I worked on it a while and found out the material wasn't coming out right. I was doing the same as the other fellows was doing, waiting for a setup, for the job to be O.K.'d.

There were several men there waiting for setups. Waiting means that the boss knew you didn't have anything to do, [610] and he couldn't do anything about it. They kept men coming to him and he still couldn't use them. So they just waited for setups.

Trial Examiner Kent: I might interrupt to ask a question. You say you had been working in the generator department prior to working in the drill press department?

The Witness: Yes. It all happened so close there. I was working in the generator department and I was transferred——

(Testimony of Charles Spallino.)

Trial Examiner Kent: Each company had a generator department?

The Witness: O'Keefe and Merritt.

Trial Examiner Kent: I thought Pioneer——

The Witness: That was O'Keefe and Merritt. I never received a check from Pioneer Electric.

Trial Examiner Kent: O'Keefe and Merritt had a generator department?

The Witness: Check.

Trial Examiner Kent: Running at the same time that Pioneer Electric was running, principally a generator department?

The Witness: Yes, sir.

Trial Examiner Kent: That is the only question I had, Mr. Garrett.

Mr. Garrett: Yes. Thank you, your Honor. I have no further questions, your Honor. [611]

Mr. Nicoson: At this time, your Honor, I would like to ask leave to withdraw this witness for the purpose of putting on two witnesses who will have to be out of town day after tomorrow. If their examination is in any wise as lengthy as this has been, we will be hard put to get through with them by quitting time tomorrow, especially working the short hours we are.

The witness will be available for recalling. I have a few questions I would like to ask him on redirect. If any of the parties want any further cross I would like to have him here for that purpose, too. But I am getting on short time with these other two witnesses, and I ask leave to with-

(Testimony of Charles Spallino.)

draw him at this time for the purpose of calling these other two witnesses.

Trial Examiner Kent: I think under the circumstances it might be advisable to do that then, and you can be recalled to the stand after these other two witnesses are examined.

Mr. Nicoson: John Despol.

Mr. Tyre: Mr. Examiner, I understand that there may be further cross-examination by the Machinists or by the Painters.

Trial Examiner Kent: Oh, yes, by the Painters and Mr. Reed of the I.A.M., who may have some questions.

Mr. Nicoson: I want to make it clear that I am not [612] trying to dispense with the witness.

Trial Examiner Kent: No, he is just withdrawn temporarily in order to be sure you can get the testimony in of these two witnesses.

(Witness withdrawn temporarily.)

JOHN DESPOL

called as a witness for the National Labor Relations Board testified as follows:

Direct Examination

Q. (By Mr. Nicoson): Will you state your name for the record? A. John Despol.

Q. What is your business or occupation?

A. I am representative for the United Steel Workers of America.

Q. And as representative of the United Steel

(Testimony of John Despol.)

Workers of America, are you familiar with its purposes? A. I am.

Q. Are you also familiar with its organizational efforts to solicit and take employees of certain factories into its membership? A. I am.

Trial Examiner Kent: By the way, I don't believe I swore Mr. Despol.

(The witness was here sworn.) [613]

Q. (By Mr. Nicoson): Will you now state your name for the record? A. John Despol.

Q. What is your business or occupation?

Trial Examiner Kent: Well, I think the record may show the other questions, I think.

Mr. Nicoson: Well, it may, as far as I am concerned, but I didn't know the feelings of the other parties, so I just thought I would make my record. The witness is now under oath.

Trial Examiner Kent: I don't think there will be any objection to the record made prior to the swearing of the witness to stand as his answers.

Mr. Nicoson: Very well.

Q. (By Mr. Nicoson): There has been some testimony in this record about the steel workers attempting to organize the employees of the O'Keefe and Merritt plant. Are you acquainted with those efforts? A. I am.

Q. Were any of those under your supervision or control?

A. Yes, the organizational drive of the United Steel Workers of America this last fall of 1945 was under my direction.

(Testimony of John Despol.)

Q. Now, directing your attention to that effort or campaign, which ever you choose, can you state about when it began? [614]

A. It began in September, 1945. That is, that is our last campaign.

Q. It has already been stipulated that a National Labor Relations Board election was held on November 20, 1945. Between the time the organizational efforts began as you stated sometime in September, and November 20, 1945, did you have an occasion to call Mr. Cecil Collins by telephone?

A. Yes, I did, when we—about the time that we requested recognition of our union by the company I called Mr. Collins.

Q. Was it before the National Labor Relations Board election? A. Yes, it was.

Q. Now about how long before that did this conversation occur?

A. Well, I believe it was toward the end of October, the best I can recall, or first part of November.

Q. Did you on behalf of the Steel Workers file with the National Labor Relations Board a petition for certification? A. Yes, I did.

Q. I show you a document which, for the purpose of identification, has been marked Board's Exhibit 3, and ask you to examine it and state if that is your signature on that document.

A. It is.

Q. Did you file it with the Board on or about that time? A. I did. [615]

(Testimony of John Despol.)

Mr. Nicoson: I now offer in evidence as Board's Exhibit 3, Petition for Certification of Representatives, with the request that I originally have, if received I be permitted to introduce a copy thereof.

Mr. Garrett: On Exhibit 3, as well as 4, 5 and 6, objections were entered by all the parties to the contract, and, of course, by the respondent, also, and ruling reserved.

I don't believe the identification of that document by Mr. Despol makes any more admissible the document than it was previously, if our objections are good. Our objections were based, of course, as the record will show, on behalf of the unions, parties of the contract, on the contention that these four exhibits, 3, 4, 5 and 6 for identification, related to a collateral matter, to which these unions, parties to the contract, were not parties; that it was hearsay as to them; that they are not bound by any of those documents, parties to the proceeding; and, of course, that the documents relate to certification with a party other than the party with whom these unions, parties to the contract, entered into contractual relations.

Mr. Collins: On behalf of the respondent Pioneer Electric Company and co-partnership, I wish to renew the objection I made at the opening of the hearing.

Trial Examiner Kent: Well, that objection, of course, [616] is somewhat in line with the motion made heretofore that, in effect, what might be treated as a severance would first be determined as

(Testimony of John Despol.)

to whether or not there was a substantial identity of interest between the O'Keefe and Merritt and Pioneer Electric, partnership.

I don't think we can try the case intelligently that way. The issues are so intermingled that I feel I must let the Board's attorney make a complete record. And, in any event, I, for other reasons, think this document is admissible. It may be admitted.

Mr. Collins: I am merely making these objections, Mr. Trial Examiner, so you can make a mental segregation of the evidence.

Trial Examiner Kent: The objection is not based upon the ground this is not the identical exhibit filed with the Board?

Mr. Garrett: No. No objection based on foundation is urged. Of course, no objection is made upon the ground that this paper is not the best evidence of the document it purports to be.

I would like to call your attention to the fact that if ruling were reserved on Exhibits 3, 4, 5 and 6 previously, certainly there is no better reason for their admissibility now, no better reason to admit them now than there was at the time the Court reserved ruling on their admission. [617] Mr. Despol's identification of No. 3 has added nothing, because no objection was urged on the ground of foundation.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 3 for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 3

Case No. 21R 3101

Docketed 10/23/45

United States of America

National Labor Relations Board

PETITION FOR CERTIFICATION
OF REPRESENTATIVES

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive collective bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9 (c) of said Act, Petitioner requests the National Labor Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

1. Name of employer O'Keefe & Merritt Co.
2. Address of establishment 3700 E. Olympic Blvd., Los Angeles.
3. Industry, Stove manufacturing.
4. Petitioner (Indicate affiliation, if any) United Steelworkers of America, in behalf of Stove Division, Local 191, CIO.

(Testimony of John Despol.)

5. The alleged appropriate bargaining unit (describe below groups of employees or individual job classifications) includes all production and maintenance employees, excluding office employees and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

6. The Unit contains approximately 240 employees, of which number a majority have designated or selected petitioner as their bargaining representative.

7. The following individuals or labor organizations claim to represent employees in the Unit: (Name and affiliation, if any) None.

By /s/ JOHN A. DESPOL,

Intl. Representative.

4110 E. Slauson, Maywood Calif.

JE-8111.

Subscribed and sworn to before me this 23d day of October, 1945, at Los Angeles, Calif.

/s/ A. R. TAYLOR,

Field Examiner, National Labor Relations Board,
21st Region, Los Angeles, Calif.

[Endorsed]: No. 21C2689. Date 3/13/46.

(Testimony of John Despol.)

Q. (By Mr. Nicoson): Now, showing you Board's No. 3, which has been received in evidence, and directing your attention to the words "Dock-eted" and thereafter "10-23-45," I will ask you if the telephone conversation was before or after that date?

A. I believe it was after that date.

Q. Did I ask you if you could fix the time by how many days, weeks, before November 20th date? If I didn't, will you please try and give that?

A. Well, it was within a few days of October 23rd date.

Q. Would you now state what was said in that telephone conversation, what Mr. Collins said to you and what you said to Mr. Collins?

A. I told Mr. Collins that we were requesting recognition of the Union by him and hoped to have his consent to the consent of his Company for a consent election.

Mr. Collins replied that he would never consent to an election, and would take the matter all the way through the procedures of the National Labor Relations Board, as high as [618] he could go.

I also, at that same conversation, complained to Mr. Collins in respect to the management permitting men to go through the plant on company time signing employees up into one or more of those unions affiliated with the American Federation of Labor.

Mr. Collins denied any knowledge of such incidents. In fact, he said he would call the superin-

(Testimony of John Despol.)

tendent into his room, where he was talking from. After some delay on the phone he stated on the phone that the superintendent had informed him that he also knew of no cases where men were going through the plant, either A. F. of L. representatives or employees of the Company, signing employees up on Company time.

I then told Mr. Collins that we were going to instruct some of our members on the job, who knew precisely what had been reported to me, namely to sign employees up during Company time and in open manner.

He stated that if that occurred and the management became aware of it they would discharge any or all employees caught doing such an act.

I replied to him that if he discharged anyone for that act, who was a member of our union, we would expect uniform application to any employees who were conducting themselves in similar manner, for any other labor organization. [619]

Mr. Collins, after some other discussions, indicated that perhaps he might not discharge anyone, but simply would give them a disciplinary layoff.

I replied to him that if such occurred that the disciplinary layoff would have to be equal as between any employees who were concerned, whether it be A.F.L. organizations, our own or any other.

Q. Did anything further transpire at that conversation?

A. Well, I don't recall whether it was this par-

(Testimony of John Despol.)

ticular telephone conversation or a later one in which Mr. Collins indicated that if there was any rough stuff as I recall the phrase he used, that the same would apply to myself, if there is any rough stuff on our part. I at that time replied on this and several other occasions that most labor organizations including our own had no choice in these matters but to follow the policy of the employer and let it go at that.

Q. Is that all that you recall transpiring at that time?

A. That is all I recall at the moment.

Q. Thereafter then did you attend a conference in the National Labor Relations Board office with respect to the petition which you have in front of you and which is Board's Exhibit 3?

A. I did.

Q. Can you fix the time of that conference?

A. I believe it was the first or second week in November.

Q. Who was present at that time?

A. The representative for the Board, Miss—I don't recall her name at the moment.

Q. Mrs. Phoenix?

A. That is right, Mrs. Phoenix, and Mr. Blaney for the Teamsters' Union, I believe Mr. McMurray for the Machinists' Union and perhaps other A. F. of L. Unions, I think a Mr. Bassett was there, I don't recall whether he was there or not. Mr. Collins was there, Mr. Rotter, Mr. Conway and myself.

(Testimony of John Despol.)

Q. I will ask you whether or not there were any representatives of the Carpenters present?

A. Yes, I believe Mr. Cordell, representative of the A. F. of L. Carpenters' Union, was present.

Q. I will ask you whether or not any representative of the Moulders was present?

A. Mr. Lazzarini of the Moulders was present.

Q. Did you have any discussion at that time and place? A. I don't get the question.

Q. Was there a discussion at that time and place?

A. Yes. We discussed the question of the consent election.

Q. What was said about that?

Mr. Garrett: Objected to as not the best evidence.

Mr. Nicoson: What would be the best evidence?

Mr. Smith: A transcription.

Mr. Garrett: Well, I made that objection because it seems to me that if representatives of unions are called in, if a representative of an A. F. of L. union here was called in, summoned in to the National Labor Relations Board office in the Twenty-first Region in matters that they have not initiated or instituted they ought to be protected from hearsay accounts of what happened at the meetings. If the Board has not kept the proper record of those proceedings, which would be the best evidence, the Board ought to keep such a record for the protection of all parties. There is no showing that no such record exists of the proceedings by the Board.

(Testimony of John Despol.)

I urge further that in the absence of a showing that we do not have available better evidence of what occurred at this meeting by proper minutes, transcript or otherwise, that this second-hand hearsay should not be admitted, no proper foundation.

Q. (By Mr. Nicoson): Was there any court reporter there taking down any notes that you saw, Mr. Despol? A. Not to my knowledge.

Q. Was there any stenographer there taking down any notes that you saw?

A. Not to my observation. I think Mrs. Phoenix was the only one that took any notes as far as the Board was concerned.

Q. Now, will you state what the discussion was and who made the statement?

Mr. Garrett: Objected to as not the best evidence, objected to as hearsay, objected to as no proper foundation.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: Objected to on behalf of the respondent Pioneer Electric Company on the ground that there is no foundation at all made, and it is therefore not binding on the respondent Pioneer Electric Company.

Mr. Smith: The same applies on behalf of Local 792, Mr. Examiner, no indication that any representative of that union was present.

Mr. Garrett: The same should be stated for the Stove Mounters. There is nothing in the foundation to show that the conversation would be binding

(Testimony of John Despol.)

on them, no representative of the Stove Mounters having been shown to be present.

Mr. Nicoson: Thank you, sir. [623]

Q. (By Mr. Nicoson): Was any representative of the Stove Mounters there, Mr. Despol?

A. I am just trying to recollect whether Mr. Roberts of the Stove Mounters was present or not. I frankly do not recall whether he was or was not present.

Mr. Nicoson: Now, is there a ruling on the objection?

Trial Examiner Kent: Yes, I think the testimony may be taken.

Mr. Smith: Mr. Examiner, may I note—you have been reserving, I believe, and counsel can correct me if I am incorrect in this—well, insofar as this conversation is concerned that is about to be related, I request that you reserve your ruling as to whether or not it is admissible as against the people I represent, namely, 792, until such time as it is tied in with them, if ever. If it is not, then I want to make our motion to strike, or else possibly at that time you will rule on our objection.

Trial Examiner Kent: Until such time as it is tied up, I think the testimony should be taken subject to a subsequent motion to strike as far as your client is concerned.

Mr. Smith: Thank you.

Mr. Nicoson: Will you proceed, sir?

Mr. Garrett: Your ruling is that my general objections have been overruled, is that right?

(Testimony of John Despol.)

Trial Examiner Kent: Yes. [624]

Mr. Garrett: May I have a ruling as to the Stove Mounters then, your Honor? Your Honor will recall——

Trial Examiner Kent: The record shows it is questionable whether or not a representative of the Stove Mounters was present. The testimony may be taken subject to a later motion to strike, which may be made on behalf of the Stove Mounters.

The Witness: May we have the reporter read the question?

(Question read as follows: Will you now state what the discussion was and who made the statement?)

A. The discussion pertained primarily to three phases of our petition for election and certification. First was the question as to whether or not the parties would consent to an election, and representatives for the various A. F. of L. unions, including the Metal Trades Council, had indicated that they would consent to an election, and Mr. Collins speaking for the company, had indicated that he would not consent.

Mr. Garrett: Is the witness talking about something that happened at the meeting or something that happened prior to the meeting? I move to strike this.

Mr. Nicoson: I suggest that counsel listen to the witness and not carry on a conversation down here and he will know what is going on. I also further object to interruption in the middle of this witness'

(Testimony of John Despol.)

answer because he is [625] carrying on this off the record conversation and has not been paying attention.

Mr. Garrett: I appeal to the record. May we have the witness' testimony read up to my interpolation?

Mr. Nicoson: I think the witness should be permitted to answer, so that we can have the whole answer.

Trial Examiner Kent: I think that pertains to the conversation. We will take the whole answer, then we will read the answer, then I will entertain your motion to strike.

The Witness: Mrs. Phoenix then for the Board stated that she, in the event this matter went to a hearing and Board order of election, desired to determine the position of the parties in respect to the bargaining unit. On behalf of the Steelworkers I had indicated and stated that we were desirous of a production and maintenance unit being the bargaining agent. The question came up in respect to the truck drivers, the so-called Teamsters' unit, and we stated that was a question up to the A. F. of L. unions concerned to decide. The course of the conversation and the position taken by some of the A. F. of L. unions indicated that——

Mr. Garrett: There is a conclusion, if your Honor please.

Trial Examiner Kent: Try and confine yourself to the action of the various representatives of the

(Testimony of John Despol.)

A. F. of L. unions, who stated their position with respect to the bargaining unit. [626]

Mr. Collins: Mr. Trial Examiner, I suggest the witness be instructed to answer the question, namely, to say what each one said, not to draw conclusions from the general tenor of the meeting.

Trial Examiner Kent: I think it might be better to get the detailed remarks of the various representatives.

Q. (By Mr. Nicoson): What did each of them say, Mr. Despol, with respect to the unit?

A. The representatives for the Carpenters Union and for the Teamsters Union stated that in the event this went to a hearing they might request separate bargaining units for their particular organizations. But in the event there was a consent election, they might be willing to go along on a overall Metal Trades bargaining unit, namely, the Los Angeles Metal Trades Council of the A. F. of L.

Mr. Collins heard their statements in that regard, and with the possibility that their position might possibly result in a Board order of election that would establish several bargaining units with the C.I.O. possibly certified in one or more and the A.F.L. in others, he asked that he be given more time to decide the question of whether or not he would consent to an election, and assured Mrs. Phoenix that he, Collins, would let her know within a day or two.

Q. Did you make any statement or object along that line?

(Testimony of John Despol.)

A. We raised no objections. We indicated that if the A.F.L. [627] and company could agree on the bargaining unit, we would go along with respect to the inclusion or exclusion of Teamsters' unit that was being discussed at that time.

Q. Was anything at that time said about a date, a possible date?

A. Yes. On the premise there would be a consent election, we discussed the question of a date, and the spokesman for the A.F.L. and ourselves came together on November 20th with the company, holding reservation that because of—Mr. Collins' reservation on the question of a consent election.

Q. Did anything further transpire at that time, that you recall?

A. Nothing I recall at this time.

Mr. Garrett: Now, I would like to have our motion to strike taken under consideration, your Honor, beginning with the answer to the third question back.

Trial Examiner Kent: Yes.

(The following portion of the record was read:

“Mrs. Phoenix then, for the Board, stated that she, in the event this matter went to a hearing and Board order of election, desired to determine the position of the parties in respect to the bargaining unit.”)

Mr. Garrett: I move to strike it on the ground it is [628] hearsay, not the best evidence, not binding on these parties.

(Testimony of John Despol.)

Trial Examiner Kent: The record may remain.

Mr. Garrett: Now, I want to strike the following sentence, which I will ask the reporter to read, on the ground it constitutes a conclusion of this witness and is not a record of anything transpiring at the hearing in question.

(The following portion of the record was read:

“On behalf of the Steelworkers, I have indicated and stated that we were desirous of a production and maintenance unit being the bargaining agent.”)

Trial Examiner Kent: Well, that is, I think, substantially—substantially means this witness said that. I think we are probably getting highly technical.

Mr. Garrett: I move to strike——

Trial Examiner Kent: The record may remain.

Mr. Garrett: I move to strike the next sentence on the same ground.

(The following portion of the record was read:

“The question came up in respect to the truck drivers, the so-called Teamsters’ unit, and we stated that that was a question up to the A.F.L. Unions concerned to decide.”)

Trial Examiner Kent: I think that might be stricken for further clarification. [629]

Mr. Garrett: Now, I want to move to strike all of the answer to the previous question. There is

(Testimony of John Despol.)

one previous question on which he got into this conference. The reporter started with the second question, rather than the first, that brought on this conference. That is the one in which we started talking about things that never happened.

Trial Examiner Kent: Read the previous question.

Mr. Garrett: There is an objection of mine in there.

(The following portion of the record was read:

“Q. Will you now state what the discussion was and who made the statement?

“A. The discussion pertained primarily to three phases of our petition for election and certification. First, was the question as to whether or not the parties would consent to an election, and the representatives for the various A.F.L. unions, including the Metal Trades Council, had indicated they would consent to an election. And Mr. Collins, speaking for the company, had indicated that he would not consent.”)

Trial Examiner Kent: The record may remain. I can't see you are prejudiced at all. That is just preliminary to the development of the outcome of the meeting.

Mr. Garrett: At this time I will ask the hearing officer to order Mrs. Phoenix to appear in this court [630] room with her records, notes, and minutes of the conference in question on the R Case,

(Testimony of John Despol.)

so that her testimony and those records may be used by the counsel for parties to the contract in cross-examination of this witness, who has been permitted to testify.

My position is the Board's attorney can't bring in left-handed evidence about what happens at a meeting that the Board calls, and at the same time withhold records.

Trial Examiner Kent: Assuming a record was made—— [631]

Mr. Nicoson: Just to make this short, if he wants to see the memorandum prepared by Mrs. Phoenix, I certainly have no objection to showing it to him. I don't know under any rules of evidence where that particular memorandum will be permissible in evidence.

Mr. Garrett: I don't want it in evidence. If the Board's attorney is willing to let me see the notes, so I can check them——

Mr. Nicoson: If that is all you want, sir, you are welcome to it.

Mr. Garrett: Thank you.

Mr. Nicoson: Let the record show that I have just now furnished to Mr. Garrett, at his request, a memorandum prepared by Mrs. Phoenix, as a result of that conference.

Mr. Garrett: Consisting of three pages.

Trial Examiner Kent: We might recess for five minutes while Mr. Garrett reads it.

(A short recess.)

Trial Examiner Kent: On the record.

(Testimony of John Despol.)

I wonder, after you gentlemen have seen the Field Examiner's memorandum, whether you might be willing to stipulate that is what actually transpired at the conference?

Mr. Garrett: I would be willing to stipulate.

The Witness: Your Honor, I wish to correct my testimony. Mr. Lazzerini was not present, Mr. Roberts was for the Stove Mounters Union. I had the two confused in my mind. [632]

Mr. Nicoson: I will stipulate that is what occurred.

Trial Examiner Kent: Would that pretty well cover the ground?

Mr. Nicoson: It is all right with me if it is agreeable to all the parties.

Mr. Garrett: I will stipulate that the record of Mrs. Phoenix, as to that conference, as shown in her memorandum which is in the Board's file in the "R" Case is a true account of what happened at that conference.

Mr. Smith: Mr. Examiner, all I would like to do in regard to this is make the same objection and request the Examiner make the same ruling, reserve his ruling.

Trial Examiner Kent: No representative of your union was present there?

Mr. Smith: That is right.

Trial Examiner Kent: The general objection; it is not binding on your line.

Mr. Smith: Might I state this: There is no point

(Testimony of John Despol.)

in taking time every time to make that same objection. At the end of the hearing possibly we can at that time tell you exactly what we feel that is subject to strike, because it is not tied in.

Trial Examiner Kent: Yes.

Mr. Smith: And it would save—possibly expedite it.

Trial Examiner Kent: My position is, of course, these [633] issues are so intermingled it is a little bit dangerous for me to take a chance and make a ruling at the early stages of the proceedings that may not get me in difficulty, and may not make a confusing record later. We will treat your motion, in substance, as a continuing motion to strike.

Mr. Collins: I am willing to join in this stipulation, so far as the O'Keefe and Merritt Company is concerned. I don't want to stipulate on behalf of the Pioneer Electric. I don't think it should be binding on them; they weren't present.

Trial Examiner Kent: Well, I suppose the statement shows only the presence of the O'Keefe and Merritt. I don't think it is necessary to go any further than that.

Mr. Reed: Mr. Examiner, I would like to enter a continuing objection on behalf of the International Association of Machinists as to being bound by this line of testimony, and you may reserve your ruling on the same basis.

Trial Examiner Kent: That is the same as the other gentleman indicated, no representative of your union was present?

(Testimony of John Despol.)

Mr. Reed: That is correct.

Trial Examiner Kent: Yes. There may be a continuing objection. It may be treated as a continuing objection. I will consider it later.

Mr. Nicoson: Re: O'Keefe & Merritt Company. Case No. 21-R-3101. Memo. 11-5-45:

"A conference was held today on the above case. Those present were Mr. John D. Roberts of the Stove Mounters, Nick Cordil of the Carpenters, W. T. Blaney of the Teamsters, Cecil Collins, attorney, and F. F. Rotten, personnel manager for the company, and John Despol and Gilbert Anaya and G. J. Conway for the Steelworkers.

"Roberts stated that——"

Mr. Collins: Just a moment. Can we go off the record?

Trial Examiner Kent: Yes.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: It is understood then I may have a copy of this made and entered?

Mr. Collins: Submit the original and substitute copies.

Trial Examiner Kent: Yes; two copies may be introduced.

Mr. Nicoson: I will bring the original in here, and I will offer the original and with permission substitute copies.

Trial Examiner Kent: Yes.

Mr. Nicoson: I take it the parties aren't inter-

(Testimony of John Despol.)

ested in these subsequent memoranda of November 7th, November 8th.

Mr. Garrett: I don't think they are relevant.

Mr. Nicoson: May we have that Board number next in order reserved for this document? [635]

Trial Examiner Kent: Yes. The next Board's exhibit will be reserved.

(Thereupon, the document referred to was marked as Board's Exhibit 9, for identification, and was reserved.) [636]

Q. (By Mr. Nicoson): After the election was held on November 20th, as has been stipulated here, did you thereafter meet with Mr. Cecil Collins?

A. Yes. I arranged for an appointment with him to meet him and present him with the contract of United Steelworkers of America that was submitted as the basis for negotiations by our union.

Mr. Nicoson: Please mark this document for identification.

(The document referred to was marked as Board's Exhibit No. 10, for identification.)

Q. (By Mr. Nicoson): I show you a document which, for the purpose of identification, has been marked as Board's Exhibit 10, and ask you to take it and examine it, and state, if you know, what it is.

A. This is a copy of the agreement we submitted to the company as the basis for our negotiations.

Q. When did you submit that document?

A. It was about the middle of December.

Q. To whom did you submit it?

(Testimony of John Despol.)

Mr. Garrett: I didn't get that. About what time?

The Witness: The middle of December.

Mr. Garrett: Thank you.

Q. (By Mr. Nicoson): To whom did you submit it? A. Mr. Collins. [637]

Q. Where was Mr. Collins at the time?

A. In his office.

Q. Where is his office?

A. It is located in the offices of O'Keefe and Merritt Company's plant in the 3800 block East Olympic.

Q. Was any other person present besides Mr. Collins and yourself?

A. I am not sure, but I believe Mr. Rotter was present.

Q. Anyone else?

A. Not to my recollection at that time.

Q. Just the two of them?

A. Mr. Conway accompanied me at the time.

Q. Who is Mr. Conway?

A. Mr. Conway is a representative of the United Steelworkers of America.

Q. Are his initials G. J.?

A. G. J. Conway.

Q. I believe you testified that you presented a copy of this contract to Mr. Collins.

A. That is right.

Q. Did you have any discussion about it?

A. We stated that it was a contract so far as—I stated so far as the contract was concerned, it

(Testimony of John Despol.)

conformed to the standard provisions of our contracts wherever there were procedural questions involved, such as grievance procedure, [638] arbitration, seniority, and that the wage part of it conformed with the union's wage policy at that time, which was a request for a 25 cent per hour increase. Mr. Collins stated that he would look the document over, and I then requested that we set a time for negotiations, because the events that had occurred between the election and our presentation of this contract disturbed myself, because of possible unfair labor practices occurring after the election, and I asked Mr. Collins to set not one but several dates for negotiations so that we could go through the contract and negotiations as fast as was reasonably possible.

Q. Did you at that time go through the proposed contract item by item?

A. Not at that particular time.

Q. Did you discuss anything else except the procedural provisions, as I believe you put it?

A. Well, Mr. Collins stated that he would be willing to sign a contract, providing for a wage policy that conformed to the average of his industry, as he defined it.

Q. Did he state what that was?

A. He stated that he would meet the going rate of the industry.

Q. Did he state what the going rate was? Were any figures mentioned?

A. No specific figures were mentioned. [639]

(Testimony of John Despol.)

Q. Was there anything further said about any other clauses in the contract?

A. Nothing further was said. Mr. Collins said he would sign the contract as presented with that understanding on the wage question. I said, "You better read the contract, first, before you state that you will sign it," and there was laughter on the part of both the part of Mr. Conway and Mr. Collins when I remarked that he should read the contract first.

Q. Is that all you can recall that occurred?

A. That is all I can recall at the meeting when we presented the contract to Mr. Collins.

Q. Was there another meeting?

A. Yes, there was.

Q. When did it take place?

A. The latter part of December, just prior to Christmas.

Q. Where did that take place?

A. Will you repeat the question?

Q. Where did the meeting take place?

A. That also took place at Mr. Collins' office in the O'Keefe and Merritt building.

Q. Who was present at that time?

A. Mr. Roberts—I mean Mr. Rotter, Mr. Collins—no, just Mr. Collins, myself and Mr. Conway.

Q. Anyone else present at that time?

A. Toward the end of the meeting a young woman who Mr. [640] Collins said was a client of his, came into the meeting. She was waiting for him.

(Testimony of John Despol.)

Q. Did you have a conversation at that time and place? A. Yes, we did.

Q. State what Mr. Collins said, what you said and what Mr. Conway said.

A. Mr. Collins again repeated his discussion on the company's wage policy, that I have just related, and said that he would agree to meet the going wage in the industry, and that he would be agreeable to a maintenance of membership and checkoff provision in the contract, that he had not had time to thoroughly go over the balance of our contract. I said that we wanted to go over it, our proposed contract, item by item, and paragraph by paragraph; that with respect to the union security provision, we wanted a full union shop clause in the contract, and that we would discuss wages when we came to that particular part of the contract negotiations where it might be appropriate to discuss the wage increase and the procedural clauses of the contract.

Q. Did Mr. Collins say anything about the union shop?

A. Mr. Collins said he would not agree to a union shop.

Q. Anything further transpire at that meeting that you recall?

A. Nothing that I recall which is pertinent.

Q. Did you have any more meetings with Mr. Collins? [641]

A. Yes. We arranged to, had arranged a follow up meeting which Mr. Collins was ill and was unable

(Testimony of John Despol.)

to make, and we did not meet again until after the first of the year.

Q. About how long after the first of the year did this next meeting occur?

A. I believe it was the first week of January. If I had a calendar I could give fairly accurate dates, I think.

Trial Examiner Kent: I have one here.

The Witness: It was either Wednesday or Thursday, January 2nd or 3rd. I don't recall which day it was.

Q. (By Mr. Nicoson): Where did the meeting take place?

A. At Mr. Collins' office in the O'Keefe and Merritt building.

Q. Who was present?

A. Mr. Collins and a committee of employees from the plant who were, I was told, representing the A. F. of L. interests in the plant. [642]

Q. Who told you that?

A. Mr. Collins stated that he thought it advisable to have these negotiations open and above board, and that he had requested the A. F. of L. Committee to be present. Mr. Levascos was one of them.

Q. Was that Mr. John Levascos?

A. Mr. John Levascos.

Q. Do you remember any of the other names?

A. I don't recall their names offhand. I made a note of their names.

Q. Do you have that note with you?

(Testimony of John Despol.)

A. I don't have that note with me, no, but I made a record of it.

Q. Had you had anything to do with having this so-called committee in there? Will you read the question to him?

(Question read.)

A. No, we at no time requested that any committee representing the A. F. of L. be present. At that meeting I stated that we had no particular objection at that time to their presence, in view of the fact that we were going to discuss the procedural parts of the contract which would affect all employees irrespective of what union they may be affiliated with.

Q. Did you have such a discussion? Did you have a discussion about portions of the contract?

A. Yes.

Q. What was said and who said it?

Mr. Purver: Is that the note?

The Witness: Those are my notes, yes.

Q. (By Mr. Nicoson): I will hand you what you have indicated are your notes. I also offer them to the various counsel here. I think I better do it first.

The Witness: This is the second meeting. Also I would like to have the original contract negotiation notes. The names are written there.

Q. (By Mr. Nicoson): I hand you a document which you indicate to me are as you describe them your notes, and ask you to examine it and state if from examining that you can refresh your recollec-

(Testimony of John Despol.)

tion as to the persons there present on the so-called A.F.L. Committee.

Mr. Collins: At which meeting is this?

The Witness: This was the first meeting on Tuesday, January 1st.

Mr. Collins: Was this the very first meeting or the second meeting?

The Witness: This was the first meeting after the new year.

Mr. Garrett: Was this on January 1st or 2nd.

The Witness: It was on January—Thursday, rather January 3rd. [644]

Q. (By Mr. Nicoson): Now, having refreshed your recollection, can you state the names of other of the so-called A. F. of L. Committee that were present at that time?

A. Yes, Mr. Levascos I have already stated he was present, was there, and a man by the name of Jake Derosé, a Mr. Joe Sanchez and a Mr. Doyle also present at that meeting with Mr. Fred Rotter.

Q. Will you now state what was said at that time and place and who said it.

Mr. Collins: Mr. Nicoson, I still don't know whether this is the first, second or third meeting that he is talking about.

Mr. Nicoson: According to his testimony, this was the third meeting, the one happening in January, January 3rd, 1946.

Mr. Garrett: Was Conway there with you?

The Witness: Mr. Conway was not present at this meeting.

(Testimony of John Despol.)

Q. (By Mr. Nicoson): What was said and who said it?

A. At the outset of the meeting Mr. Collins again reiterated the company's position with respect to wages, which is a repetition of what I have previously stated, and that he would not agree to a union shop provision but would agree to maintenance of membership and a checkoff. He also said if we desired it we could have a committee of our own from the [645] plant, and I replied that we would determine that on our own part, when it would be desirable to have a committee of the Steelworkers' union from the plant present, that we might possibly resort to having all of our members in the plant on such a committee, if the negotiations required it. After Mr. Collins had stated the company's position in respect to union shop and wages, I requested we go over the various clauses of the contract section by section. I discussed the hours of work clause, and Mr. Collins wanted to read that more thoroughly, he was not ready to decide on the exact language, but did state that the company would pay the present practice of time and a half after 8 and time and a half after 40 hours, and that he wanted a clause pertaining to company rules included in the contract. He agreed to our management clause that we submitted to him. He made it clear that all the things he was agreeing to were tentative agreements subject to final completion of a contract and execution of a contract between the parties. We did not go further into the wage clause,

(Testimony of John Despol.)

so far as the amount of the wage increase, as I suggested that we clean up the easier parts of the contract first.

Q. Anything further?

A. We discussed the rate establishment clause, in changing the rate for an old job whose content had been changed or for establishing a rate for a new job that comes into the [646] plant, and Mr. Collins indicated tentative agreement. On the night shift bonus he indicated that he would take the position of maintaining the present practice of 5 cents an hour for the second shift and 10 per cent for the third shift. On holidays he said they would not change their present practice, which was to pay time and a half for holidays worked, but to pay nothing for holidays not worked, the demand of the union being paid holidays, and double time for holidays worked. On seniority Mr. Collins indicated tentative agreement.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

The Witness: Mr. Collins said he would tentatively agree to our proposal with one exception.

Mr. Garrett: Excuse me. May I inquire at this time what have these contract negotiations to do with any of the issues in this case?

Mr. Nicoson: Well, there is a refusal to bargain issue. Now, I am trying to show that they did not bargain.

Trial Examiner Kent: Yes, I think that is material. That is one of the issues.

(Testimony of John Despol.)

Mr. Collins: If that is the purpose of the examination, at this point I offer to stipulate again that we will sign the same contract with the C.I.O. on behalf of the O'Keefe and Merritt Company that was signed with the A. F. of L. on behalf of the Pioneer Electric Company, with the exception [647] that we will give them a maintenance of membership and the customary escape clause. I am making that offer because to the best of my information and belief there are a great many members of the A. F. of L. employed by the O'Keefe and Merritt Company at this time, and have been all during the time of these negotiations.

The Witness: There are also members employed by the Pioneer Electric Company who are members of our union.

Mr. Nicoson: I can't stipulate to that.

Q. (By Mr. Nicoson): Anything further transpire at that time and place?

A. Mr. Collins said that he could not agree to the part of the seniority clause Paragraph F which provided for preferential seniority for grievance committeemen and local union officers employed by the company. Mr. Collins tentatively agreed to our grievance procedure clause. He would not at this particular meeting agree to our proposed unfair discharge clause, and tentatively agreed to the arbitration provisions, also to the provisions on recall to employment, also to our proposed provisions for leave of absence, except that he desired modifica-

(Testimony of John Despol.)

tion and the limit of leave of absence for any employee taking employment with the union.

Mr. Nicoson: Mr. Examiner, may we please have order.

Trial Examiner Kent: Please, gentlemen, please do not start any discussion during the examination of a witness. [648]

Q. (By Mr. Nicoson): Proceed.

A. He tentatively agreed to our safety and health clause, subject to a provision that it would not exceed the legal requirements of the company under the state law, and to the bulletin board. That was the parts of the agreement that we discussed at that particular meeting.

Q. Anything said about wages other than what you have testified to here?

A. Not at that meeting.

Mr. Smith: Mr. Nicoson, will you excuse me a moment, please. Mr. Examiner, that conversation here was merely I was asking Mr. Garrett about something that I thought possibly I did not have full knowledge of, and that was the stipulation offered by Mr. Collins, correct me if I am wrong in this; it seems to me that if O'Keefe and Merritt are now willing to stipulate as is offered, then only those matters which are deemed undesirable to the charging party should be the topic of consideration before this hearing. I think you have inherent power as Trial Examiner to expedite this hearing and to confine it down to matters which these parties cannot resolve between themselves. If they are willing

(Testimony of John Despol.)

to sign a contract of the type that Mr. Collins indicates, I think everything else pertaining to that is immaterial, and if there are any parts that are at issue, the testimony should be confined to that. I think that you have within [649] your power to require that all questions shall pertain to that exclusively. There is no reason to go into matters which the charging party is willing to say, let's cut short the trial by accepting them and stating we will sign a certain document. Why prolong this thing two or three or four weeks extra? Let's clear those issues that still remain, that admittedly are issues between the parties, and everything else is stopped by the stipulation.

Mr. Nicoson: It is rather obvious, if your Honor please, at least it is to me, it may not be to Mr. Smith, that what Mr. Collins has offered to stipulate is an empty barrel. First he says, I will write you the contract that we have in O'Keefe with the maintenance of membership clause whereby all of the employees can get out from under. If you call that bargaining in good faith, I will have to differ with you, and I will differ with Mr. Smith. I am also sorry that I have to differ with Mr. Smith because obviously—strike the obviously, but I fear that he is not fully acquainted with the decisions of the National Labor Relations Board, particularly as to bargaining in good faith. About nine years of law have been built upon that, and particularly because our case will show that they at no time in good faith bargained with the C.I.O.

(Testimony of John Despol.)

Mr. Smith: Well, I think, Mr. Nicoson, I do concede I am not as well versed on those matters as you, and I say that [650] possibly those issues which still remain to be cleared up by this particular witness to indicate bad faith or whatever is to be shown, ought to be specific rather than the entire picture as a whole, because apparently they are willing to make a contract now and all you have to decide is whether or not that contract which they are willing to enter into is or is not one which is indicative of acting in good or bad faith, and all these other conferences and discussions and everything else are immaterial. All you have to decide is whether or not the contract which they are willing to decide is one which is a proper one in view of their obligations. I think you should make that determination. If you decide that it is not a fair one, then perhaps you can say, "We will consider those aspects which are unfair here, and see if there can be further stipulations regarding those aspects; if not, why should these other issues be complicated in order to show a dozen and one of these other factors? I think if the Examiner would take the time to check into the specific matters which are still being deemed objectionable, then we can offer this, perhaps Mr. Collins will stipulate to those, or in the event you find they are unfavorable and unfair to him, these other issues can be narrowed here and there is no reason to go into the matters which both parties are not at issue on. [651]

Mr. Collins: Mr. Trial Examiner, in answer to

(Testimony of John Despol.)

the statement of Mr. Nicoson, it is obviously an unfair contract or empty barrel, or something of that kind, I would like to point out to Mr. Nicoson and to the Trial Examiner there must have been literally hundreds, thousands of maintenance of membership contracts with the customary escape clause approved by the War Labor Board all during the war. This is the time we are alleged to have committed unfair labor practice, during the war, or thereafter. At least the War Labor Board was still in existence.

The Witness: It was not in existence on January 1st.

Mr. Collins: Be that as it may, the maintenance of membership and the customary escape clause were in effect at that time. I venture to say while you were serving on the War Labor Board you have approved numerous of that type of contracts. I know I have appeared before the Board on that type of contract.

Mr. Smith: My thought is that possibly you can recognize these different one, two and three points and take testimony directly on those points, and then you can decide whether those matters should or should not be included in the contract. Apparently there is no argument that a contract should not be entered into.

Trial Examiner Kent: I don't think, in view of the nature of the allegations of the complaint, we can very [652] well do that.

(Testimony of John Despol.)

Mr. Collins: What allegation would my stipulation be in conflict with?

Trial Examiner Kent: If I could assume the proof would show that the allegations could not be sustained, that the Pioneer Electric partnership is not in effect, as alleged, the same as O'Keefe and Merritt, we might save a lot of time.

The issues here are rather complex and intermingled. I think the only safe thing to do is to proceed and let the Board make a complete record.

Mr. Collins: Just a minute. I want to amend my offer of stipulation. Mr. Nicoson, in view of your statement, are you willing to enter into this stipulation: I will stipulate we will sign the same contract we have heretofore signed with the A. F. of L., with merely the maintenance of membership and forget about the escape clause.

Mr. Nicoson: I wouldn't stipulate——

Mr. Reed: Mr. Examiner, if I may be heard.

Mr. Nicoson: He directed the question to me, and I thought perhaps I would answer.

Mr. Reed: I have been waiting for the recognition here for some time.

Mr. Nicoson: I apologize, sir. I am very sorry.

Mr. Reed: I have not taken much time in this record. I [653] will submit that any offer made by the company of the nature that is made publicly is not and does not constitute bargaining in good faith. The place for the Company to present a proposition to the union is not at this hearing, but in a collective bargaining session with the union.

(Testimony of John Despol.)

Any statement or offer made here cannot be interpreted as collective bargaining in good faith. The intent on the part of the Company to sit down with the union and so collectively bargain with them, and such a statement, should be and could be recognized by the Trial Examiner as being evidence of the Company's willingness at this time to sit down with the Union and bargain in good faith in respect to the O'Keefe and Merritt Company.

If the Trial Examiner will recognize such an offer of the Company as being made in good faith, I believe this line of question is irrelevant and unnecessary, and merely is taking up the time of the session and the record.

I submit I think your Honor may permit counsel to get together, Union representatives, and give them whatever time both sides deem necessary, to see what can be worked out. If everything is not worked out to the satisfaction of both parties to come back before you at some subsequent date and say, "Matters 1, 2 and 3 can't be worked out. Please try to help us decide them."

Trail Examiner Kent: That, of course, is a matter that [654] counsel have to consider. It is not within my province to order it.

Mr. Collins: How could the charging parties appear before this tribunal in good faith and say we are guilty of unfair labor practice charges, to wit, we won't bargain with them in good faith, when we come in in open court and offer to sign a contract. That is more than they are entitled to.

(Testimony of John Despol.)

We can bargain for five years if we have two points we can't agree on.

The Witness: There are far more than two points we are not in accord on. I would say the majority of the contract is in dispute. At no time has Mr. Collins submitted in writing, requested by any union, the contract he was willing to agree to. We asked for a written counter proposal. He has stalled us on that question, to say nothing of the phase that enters into it with respect to Pioneer Electric and the date of execution of a so-called contract with this Pioneer Electric.

Mr. Collins: My contract is now written. I offer to stipulate I will sign the same contract with Pioneer Electric——

Mr. Nicoson: I have declined to stipulate.

Trial Examiner Kent: I think we had better proceed.

Mr. Smith: Mr. Examiner, do you think it is fair to make the unions present here bind through their counsel, [655] to sit during a proceeding they take no issue in, with evidence being brought out. If they are in agreement with the facts there were these meetings in Mr. Collins' office and there has been an election, what is the point in having testimony? [656]

Trial Examiner Kent: There are issues, and I don't see how they can be resolved——

Mr. Smith: Those aren't issues.

Trial Examiner Kent: ——without making a record, and a complete record. In view of the alle-

(Testimony of John Despol.)

gations of this complaint, I think we had better proceed.

Mr. Smith: Assuming for the sake of argument, that the Trial Examiner——

Mr. Nicoson: Is this going to be turned into a speech-making affair? If it is, I will go and write some letters.

Trial Examiner Kent: No.

Mr. Nicoson: We have had this over five or six different times. It certainly isn't an objection.

Mr. Collins: I wish to know if I am now being restrained from my objection by the Trial Examiner or the Board's attorney.

Mr. Nicoson: Certainly the Board's attorney is trying to stop you from giving an objection——

Trial Examiner Kent: There was an offer to stipulate and the Board's attorney has not agreed with the stipulation.

Mr. Collins: Very well. I now object to this entire line of testimony on the ground it doesn't tend to prove or disprove anything at issue, in view of the offer of stipulation. I move all the testimony of this witness heretofore adduced be stricken on the same ground. [657]

Mr. Garrett: We make the same motion and same objection.

Trial Examiner Kent: I will overrule the objection.

Q. (By Mr. Nicoson): Is there anything further that transpired at that meeting, which you now recall, Mr. Despol?

(Testimony of John Despol.)

A. You refer to the meeting the first week of January?

Q. That is correct.

A. Nothing further that I recall. We set a date for another meeting, which was Tuesday, January 8th.

Mr. Collins: Just a moment. There is no ruling on my motion. I made a motion and objection. May I have a ruling on it?

Trial Examiner Kent: The last motion I overruled. What is the motion that you——

Mr. Collins: I move the testimony of this witness be stricken on the ground it doesn't tend to prove or disprove anything at issue in this case.

Trial Examiner Kent: I think the record shows I overruled that motion.

Mr. Collins: I now wish to object to any further testimony of this witness upon the same grounds.

Trial Examiner Kent: The same ruling.

Mr. Garrett: We make the same motion and same objection.

Trial Examiner Kent: I will overrule the motion.

The Witness: We agreed to meet on Tuesday, January 8th. [658]

Q. (By Mr. Nicoson): Did you meet on that date? A. Yes, we did.

Q. Where did you meet?

A. We met at Mr. Collins' office in the O'Keefe and Merritt building, the same place as before.

Q. Who was present at that time?

(Testimony of John Despol.)

A. If I may have my notes I can cite the members of the A.F.L. committee that were present. Mr. Collins was present, myself, and new A.F.L. committee consisting of Mr. Cunningham, Mr. Castro, Mr. Daley and Mr. Arlotti.

I stated then that this would be the last time that we would be agreeable to having any committee purporting to represent A.F.L. Unions in the plant present, because it seemed to me then that we would finish our discussions of procedural matters of the contract at that time and would be getting into the wage and cost factors of the contract, and that I did not wish to have any committee purporting to represent A. F. of L. interests present at such negotiations.

Q. What further was discussed, if anything?

A. We proceeded to go back through the entire contract, as we had before, going into those questions Mr. Collins said that he wanted to think over or consult with others in. The particular one was the clause referring to military service and certain privileges to be granted to veterans of World War No. II.

Mr. Collins then stated in that particular issue that [659] he had consulted with the American Legion Post in the plant and that they had objected to it, and therefore he, as the company, was not going to agree to it, although at the previous meeting one of the veterans of the so-called A.F.L. committee had agreed with me that it was a good clause on behalf of the veterans. We discussed the——

(Testimony of John Despol.)

Q. By the way, was that A.F.L. committeeman present at this second time the A.F.L. was in there?

A. No, he was not present the second meeting.

Q. What further was discussed, if anything?

A. Mr. Collins stated that he had not found the time to carefully read all the language of our contract, and that he was still not sure of some of the language.

I then requested that he give us a written counter-proposal to each and every clause in the contract.

Q. What did he say about that, if anything?

A. That was Mr. Collins—Mr. Collins said he would give us a written counter-proposal. I asked him when he could deliver same, and he indicated that within the week he would have it within our hand.

I then discussed the discharge clause of the contract that we passed over the previous meeting.

Mr. Collins then tentatively agreed to it, subject to one change in language, dealing with the question of the retroactive date for compensation for any employee who was deemed [660] unfairly discharged by an arbitrator.

Mr. Collins then presented an hours of work clause, which provided for the time and a half after eight hours and time and a half after 40, but omitted reference to any of the other items in respect to hours of work that we had submitted.

I argued at length with Mr. Collins in respect to these other items, and requested he either say yes or no to them or submit them in written form.

(Testimony of John Despol.)

Mr. Collins then again repeated his previous statement, that he would agree to the prevailing wage scale of the industry, and he would sign a maintenance of membership and checkoff clause, and would sign that kind of a contract. But it went no further, and I said we would argue the question of the wages, that our position was still an increase for all employees the union was the certified bargaining agent for, of 25 cents per hour, and we would produce certain economic arguments in respect to that particular issue.

We then went through the same issues we had gone through before, making certain minor corrections, such as the benefits and privilege clause.

Mr. Collins said he wanted to add to it, that it would not include the annual Christmas bonus that the company had been giving.

I asked him, "Well, if he wouldn't include it in the [661] basic contract, would he include it in a supplemental wage section to the contract covering the question of wage scale and the amount of the Christmas bonus.

Mr. Collins said, no, he would not. He did agree to the part of the military leave clause that pertains to the present G.I. Bill of Rights, in which an employee who was a former employee of the company, would have his seniority continued while he was in service and would secure his job back, providing he applied within the 90-day period after being released from service, from military service; but refused to agree to that military service clause

(Testimony of John Despol.)

that would give any veteran, even though he was not formerly employed by the company, seniority recognition for the time spent in service.

We went through the balance of the contract, and Mr. Collins stated that he was not sure of the language. And again I repeated my request for a written counter-proposal so I would know definitely whether Mr. Collins was or was not willing to agree so far as the precise contract language was concerned.

Q. Did Mr. Collins say whether or not he would make such a submission?

A. As I have stated, he said he would submit that proposal within the following week. We set a meeting for the following week, any date for the following week in which to discuss this [662] counter-proposal.

Q. Was that meeting held the following week?

A. As clearly as I can recall, I believe Mr. Collins was unable to meet on the particular day we had requested, and we met a few days later.

Q. Can you fix the time of this meeting?

A. Yes, that meeting was held on January 25th.

Q. Between that meeting and the one that you have just gotten through telling us about, had you communicated with Mr. Collins in any way, or did he communicate with you in any way?

A. I believe I had our office girl call in respect to receiving the copy of the proposed written proposal, that we had not yet received it. We had also

(Testimony of John Despol.)

called him for the meeting that was set for January 25th.

Q. Did you meet with him on January 25th?

A. I met with him on January 25th at the same office as before.

Q. Who else was present besides you and Mr. Collins?

A. No one else was present besides Mr. Collins and myself.

Q. What was said at that time by Mr. Collins and what was said by you?

A. We went over the cost factors of the contract on the vacation proposal. Mr. Collins stated he could only offer one week's vacation, the current vacation plan of the [663] company.

I told him the union would hold firm in its request for a two weeks' vacation plan.

After some discussion on that question, Mr. Collins stated that he would take that under advisement, to write a two weeks' vacation plan into the contract.

I then argued with him on the question of a general wage increase. Mr. Collins stated he felt they could give an increase approximating from 10 to 15 per cent over existing rates, that it would vary according to classifications.

I stated that the times called for a flat general wage increase, and that the union's position was for a 25-cent an hour increase, and we were not signing contracts at that time for less—up to that time for less than that. Although our position had

(Testimony of John Despol.)

been modified in the basis steel industry to 18½ cents that week. But that in his particular case we felt he should meet the full 25 cents per hour.

Mr. Collins said that that would throw them out of line with the rest of his competitors. We discussed the question of the so-called walkout of certain A.F.L. unions in the Pacific Northwest and the company's alleged inability to sell them in that territory, sell stoves in that territory.

Mr. Collins offered then to meet the wages paid by the Conley Can Company and the Boyle division of the United Steel Products Company.

I asked him would he agree to meet the general wage increase granted by those companies. He said no, the occupational rates.

I said we would give consideration to agreeing to a contract which would provide for a general wage increase that would amount to equal to that, that would be granted by those particular companies, although the wage negotiations of those two companies were still not yet settled. In fact, both those companies were involved in a strike, so-called national steel strike.

Q. Was anything else said at that time?

A. I again asked Mr. Collins for the written counter proposal and Mr. Collins said that he had not had one prepared. I don't recall the reason he gave at the time.

Q. Mr. Collins, did he ever submit a counter proposal to you?

(Testimony of John Despol.)

A. He has never submitted a written counter proposal to us. [665]

Q. Was anything else talked about at that time?

A. At the start of the meeting he said he was glad to see I had come alone.

I said I was glad to see he hadn't invited the A.F.L. Committee again, because I was not going to meet with him, in view of the fact we were discussing cost factors of the contract, wages and vacations.

Q. Did anything else transpire at that time?

A. Yes. Mr. Collins stated it was getting late and would I have a drink with him.

Q. Did you make a reply to that?

A. I said yes, I would be glad to have a drink with him. So we went over to Carl's Restaurant, located on Olympic and Soto, for the drink. I drove in my car and he drove over in his.

Q. Did you have a conversation there with Mr. Collins?

A. Yes. We sat down and ordered drinks, and we again discussed the question of executing the contract with United Steel Workers of America.

Mr. Collins said that the company would have to deal with the A.F.L. and would not be able to go along with our proposals.

We then discussed the various policies and growth of the A.F.L. and the C.I.O., and of the A.F.L.'s ability to enforce a boycott. [666]

I pointed out to him then that despite the so-called boycott that the company's sales had increased each

(Testimony of John Despol.)

year. The boycott did not seem likely to be harmful to the company.

Mr. Collins then suggested that the Steelworkers and myself, in particular, step out of the picture.

I asked him what he meant.

He says, well, if we should step out of the plant and let the A.F.L. and the company go ahead with an executed collective bargaining agreement——

I said that that couldn't be done.

Mr. Collins said, well, we could get nowhere, we had only 18 or 20 members in the plant at the most, and that there was just no place in the industry, stove industry or in that plant for the C.I.O.

I stated that we were the best judge of that.

Mr. Collins then said that he could make it worth my while by splitting his fee with me. That he earned a fee in handling this particular case, and that he could let me have \$1,000.00. That I could put on the show for the men and restrict our—by agreeing to another election, and that he was going to arrange for the contract to be signed by the Pioneer Electric Company and the A.F.L., and that the O'Keefe and Merritt Company was leasing its plant to the Pioneer Electric Company. And that the employees would be requested to work for the Pioneer Electric Company. [667]

I asked him was he not aware there had been similar cases before the National Labor Relations Board, where companies attempted to change names or to run out from under the certified bargaining agent.

(Testimony of John Despol.)

He said that he was not worried about this particular case, because that he and others had checked it from all angles.

I asked him what about the tax angle?

He said, "We checked from both the tax and price angle."

I said, "Perhaps you have the opinion you will have the advantage of a new company producing stoves and other heating equipment with the O.P.A., like the Kaiser-Fraser Company, a new automobile company, would have with the O.P.A. in setting its car prices."

He said he thought that would be true. He then repeated his offer of dividing his fee with me.

I told him that I wanted to think the matter over.

Q. Did anything further transpire then?

A. I discussed with him the economic power of the Steel Workers Union, the possibility we might shut off the steel supply from this particular plant, and also the possibility of economic pressure.

Mr. Collins indicated he was not worried about any action we might take. He said if necessary he would get his steel supply from Mexico. [668]

I told him that we had relations with the Mexican labor movement that might perhaps block that particular move.

This last bit of conversation was intermingled in the early part. We parted on the question of his repeating his offer and I stating I would think the matter over.

(Testimony of John Despol.)

Q. Did you thereafter meet with Mr. Collins again?

A. I met with him again on Friday, February 1st.

Q. How was that meeting arranged?

A. Mr. Collins had called our office and asked for either Mr. Conway or myself. I was ill that particular day, that was on Thursday — January 31st. I was ill with food poisoning.

Mr. Conway took the message. Mr. Conway informed me by telephone he had made a date to meet Mr. Collins at Perrino's or some other convenient place.

I told Mr. Conway over the telephone, who was not aware of the previous meeting, in view of his absence in Phoenix, Arizona, and his return at that particular day, that I did not want him to meet with Mr. Collins that day. To call Mr. Collins back and tell him we would phone him the following day for a meeting.

Q. Did you thereafter meet him?

A. The following day on Friday we phoned him and told him—told his office that we would meet at 4:00 o'clock at Carl's Restaurant. Mr. Collins' office stated that would be [669] satisfactory.

Q. Did you meet Mr. Collins at that time?

A. Mr. Conway and myself drove over to Carl's Restaurant and went in the restaurant. We did not see Mr. Collins and we went back and sat in Mr. Conway's car until Mr. Collins drove up a few minutes thereafter.

(Testimony of John Despol.)

Q. What did you do then when Mr. Collins came up, if anything?

A. Mr. Collins came up and we got out of the car and said hello to him, and we went into the restaurant. It was quite dark in the bar of this restaurant, cocktail bar. I selected a seat over near the corner of which I sat down in the middle of which Mr. Conway on my left and Mr. Collins on my right.

Q. Did you have discussion at that time and place? A. Yes, we did.

Q. State what was said who said it.

Mr. Collins: Just a moment. I move that this testimony about any offer of money to the union official be stricken on the ground it doesn't tend to prove or disprove anything at issue in the case. Surely, the officials are not going to contend taking the money they might have been above suspicion. I don't see where the unfair labor practice lies. If I had been offering it to their membership, to pull them off the job, or something like that, there might be some basis for this argument. [670]

Trial Examiner Kent: I will overrule the objection.

Mr. Garrett: I wonder if we might have some further foundation as to time, place and persons present.

Mr. Nicoson: Well, the witness has already stated it was 4:00 p.m., February 1, 1946, in Carl's Restaurant, cocktail lounge, at Soto and Olympic.

(Testimony of John Despol.)

Present were Conway, Despol and Collins. I don't know anything——

Mr. Garrett: May I have the witness on voir dire, your Honor?

Trial Examiner Kent: You may.

Mr. Garrett: Were there any other persons present and within hearing at this conversation whose names you know?

The Witness: Yes.

Mr. Garrett: Who were they?

The Witness: At this second meeting you are referring to now?

Mr. Garrett: I am talking about 4:00 p.m., February 1, 1946, at Carl's bar.

The Witness: Yes. Mr. Nethington, Mr. McCaskell.

Mr. Garrett: What was the first name?

The Witness: Nethington.

Mr. Garrett: What is his first name?

The Witness: Perry.

Mr. Garrett: Did you know Perry Nethington at the time this interview took place? [671]

Mr. Tyre: I object. That is improper voir dire. It is more properly cross-examination.

Trial Examiner Kent: What was the question?

(The question was read.)

Trial Examiner Kent: He may answer.

The Witness: Yes.

Mr. Garrett: Who was he?

The Witness: Mr. Nethington is an employee of one of the structural steel companies having a con-

(Testimony of John Despol.)

tract with our union, members of United Steelworkers of America.

Mr. Garrett: Do you recall the name of the company?

Mr. Despol: Yes.

Mr. Garrett: What is it?

The Witness: Pacific Iron and Steel Company.

Mr. Garrett: Is that Pacific Steel & Iron?

The Witness: Pacific Iron and Steel.

Mr. Garrett: Where was he seated, or was he seated?

The Witness: Mr. Nethington was seated on the booth to my right.

Mr. Garrett: Seated where?

The Witness: Seated in the booth to my right.

Mr. Garrett: Were you in a booth or at the bar?

The Witness: In a booth.

Mr. Garrett: All right. Now, you spoke about another person whom you knew who was present. What was his name? [672]

The Witness: Mr. McCaskell.

Mr. Garrett: What is his first name?

The Witness: Frank.

Mr. Garrett: Who is Frank McCaskell?

The Witness: He is the financial secretary of Local 2018 of United Steelworkers of America.

Mr. Garrett: Where was he seated?

The Witness: Mr. McCaskell was seated in the booth to my left.

Mr. Garrett: The booth to your left. Now, were

(Testimony of John Despol.)

there any other persons there present, if you know, whom you have not yet told me about?

The Witness: Yes, Mr. Leslie LaFrankie.

Mr. Garrett: And who is he?

The Witness: Mr. LaFrankie is an employee of a farm equipment company.

Mr. Garrett: What is the name of that farm equipment company?

The Witness: International Harvester.

Mr. Garrett: Is he likewise a member of the United Steelworkers?

The Witness: Yes.

Mr. Garrett: What local?

The Witness: Local 2018.

Mr. Garrett: Is Local 2018 the local involved in this [673] case?

The Witness: No, it is not.

Mr. Garrett: Did you say Mr. Nethington was a member of Local 2018?

The Witness: No.

Mr. Garrett: I didn't think so. [674]

Q. You did say he was a member of the C.I.O.?

A. I said he was a member of the United Steelworkers of America.

Q. Well, the United Steelworkers. What local does he belong to? A. Local 1981.

Q. Is that the local involved in this case?

A. Yes.

Q. What is the jurisdiction of Local 2018?

Mr. Nicoson: Objected to as improper voir dire.

Mr. Garrett: Withdraw it.

(Testimony of John Despol.)

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): Where was LeFrankie sitting?

A. Well, LeFrankie was sitting on my right.

Q. In the same booth with you or in another booth?

A. In the booth next to me.

Q. In the booth to your right?

A. That is right.

Q. Is he a member of the United Steelworkers?

A. Yes.

Q. What local? A. Local 2018.

Q. Is he an officer? A. Is he now? [675]

Q. Was he at that time an officer in that local?

A. Yes.

Q. What office does he hold?

A. He is president.

Q. Was Harry Nethington an officer of Local 1981, or merely a member?

A. He was an officer.

Q. What was his office?

A. I frankly don't know what his office was. He was a grievance committee man, I know that.

Q. All right. Now, was there anyone else present whom you have not yet named?

A. Yes, Mr. Robert Sutherland.

Q. Who is he?

A. He is an employee of the pump company.

Q. What is the name of it?

A. Pacific Pump Company, Pacific Pump Works, I believe it is called.

Q. Is he a member of one of the C.I.O. Unions?

(Testimony of John Despol.)

A. He is a member of Local 2018, United Steelworkers of America.

Q. Is he an officer?

A. He is not an officer of Local 2018.

Q. Is he an officer of any other C.I.O. Steelworkers local?

A. No, he is a grievance committee man in the plant but he is not an officer of the local. [676]

Q. Where was he sitting?

A. He was seated on my left.

Q. In the same booth with you or in the booth to your left? A. The booth to my left.

Q. All right. Now, were there any other persons present whom you have not yet named?

A. None that I personally know. The cocktail bar was about a third full when we first came in.

Q. Any other persons were unknown to you except Conway, who was with you?

A. Collins.

Q. And Collins.

A. And the four I have just named.

Q. And the four you have just named.

Mr. Nicoson: Is that all, Mr. Garrett?

Mr. Garrett: One more question.

Q. (By Mr. Garrett): Did the four people you have just named enter after you and Mr. Collins and Mr. Conway, or were they there when you and Mr. Collins and Mr. Conway entered?

A. They were there when we arrived.

Q. They were there when you and Mr. Conway arrived the first time? A. Yes. [677]

(Testimony of John Despol.)

Q. How high were the walls of these booths? Were they low enough so that you could see those around both to your right and left?

A. They are about the height of the edge here of the Examiner's box, just about even with my shoulder.

Q. What do you mean, would that be up to about where the box comes on the Examiner or where the box comes on you?

A. Where it comes on me. You could see their faces.

Q. You have your right arm resting on the box to the right of the witness box. Were the booths in Carl's Restaurant there about the same height so that you could rest your arm on them?

A. Perhaps a few inches higher. It was below the neck, put it that way.

Mr. Garrett: No further questions.

Q. (By Mr. Nicoson): Did those four persons you have just named to Mr. Garrett in addition to yourself, Mr. Conway, and Mr. Collins, engage in any conversation with you at that time and place?

A. No.

Q. Do you know how those four gentlemen happened to be there?

A. They were there at my request.

Q. Will you now state what was said by Mr. Collins, what was said by you, and what said by Mr. Conway?

A. At the start, when we first set down, Mr. Col-

(Testimony of John Despol.)

lins or [678] Mr. Conway, I don't recall which, started to order drinks, and I told them I was not drinking, my stomach was still upset, so one of them suggested milk and I ordered milk, which somewhat surprised the girl taking the orders.

Mr. Collins, as I recall, suggested I put rum in the milk, it would help settle my stomach, and I told him, no, I would just take the plain milk, because I had a rough day on Thursday. We then, I think, as I recall it, we may have discussed Mr. Conway's visit that week to Phoenix. I don't know if I discussed that with Mr. Conway just prior to that meeting, but that was part of my conversation with Mr. Conway. We also, I think, discussed the steel strike, and then Mr. Conway asked Mr. Collins about the contract with our union, and Mr. Collins repeated part of what he had said to me the previous week.

Q. What did he say?

A. He said that there was no place in the picture for the United Steelworkers, and that we should realize it and get out of the picture. He then related a story pertaining to an A.F.of L. business agent who, after long and faithful service, according to Mr. Collins, had been dumped on the scrap heap by his particular International after he was 60 years old or more, I don't recall the age Mr. Collins said, anyway, he was past his working life and he had no funds to show for it. He said we ought to look out for our personal [679] interests in these matters, particularly in the situation where

(Testimony of John Despol.)

there was no chance of the C.I.O. holding its interest in the matter. Mr. Collins then said that he would make it worth both our while, that he would let us have a thousand dollars.

Mr. Garrett: May I have that last sentence read, please?

(The record was read.)

Mr. Garrett: Thank you.

The Witness: Mr. Conway then asked, I asked him then how much would Mr. O'Keefe kick in, and Mr. Collins answered that by nodding his head in the negative. Mr. Conway then asked him how could we step out and still save face. Mr. Collins said, well, we could agree with the Pioneer Electric Company to an election, that they were taking over, that they had taken over that day, been announced at the plant, I understand, and simply cease organizational activities in the plant, and we could go down in the glory of defeat, and that we might file an unfair labor practice and confine our union activities solely to that question, filing an unfair labor practice. After Mr. Collins had answered Mr. Conway's question, I told him that it was no soap and I again stated what I said the week before, that while we certainly would file an unfair labor practice, we would also continue our organizational activities, exert economic pressure and continue to seek a contract. Mr. Collins said that he had known all about Mr. Spallino and Mr. Spallino's activities in the plant. [680] I gave no reply to Mr. Collins about that, but Mr. Conway asked Mr. Collins would Mr.

(Testimony of John Despol.)

Spallino be let go or would he be kept on the job, and Mr. Collins said as long as there was no strike participated in by any employee, that those employees would not be discharged. Mr. Conway asked if that went for Mr. Ortega, and Mr. Collins indicated by nodding his head in the affirmative that it also applied to Mr. Ortega. Mr. Conway then discussed the question of the A.F.of L. boycott, and related the circumstances of the Green Manufacturing Company, where a similar boycott had been threatened if they signed a contract with our organization, and Mr. Conway stated that that matter had been straightened out to the satisfaction of the A.F.of L. and the C.I.O. and the company, and we had not had any difficulty since then, with the exception of the problem of dividing the jurisdiction line between the Teamsters Union at the Green Manufacturing plant in South Gate and the bargaining unit relations between the Teamsters Union and ourselves were satisfactory. Mr. Collins said that he had met with the A.F.of L. officials that same week and that they had said that relations were not satisfactory between the C.I.O. and the A.F.of L. and that they were not going to withdraw the boycott. I told Mr. Collins that we would take up the question of the boycott and attempt to resolve it satisfactorily for everyone concerned after he had executed a contract with the United Steelworkers of America. [681]

Mr. Collins also stated that the salesman for the

(Testimony of John Despol.)

Pacific Northwest territory informed the management that he was unable to sell goods or at least get them installed because of the position of the American Federation in his particular territory. I then followed in reply to that that such matters might happen within the structure of the American Federation of Labor itself, and I cited what had occurred at the Payne Furnace Company. The Payne Furnace Company, as I related, stated at that time, had been under the jurisdiction of the Stove Mounters Union of the A.F.of L. when the Sheet Metal Workers of the A.F.of L. claimed jurisdiction and because of a boycott instituted by the Sheet Metal Workers Union the Payne Furnace Company's plant in South San Francisco or San Francisco Area had been forced to shut down because of the Sheet Metal Workers' boycott, and pointed out to Mr. Collins that the question of these so-called boycotts might occur right within the structure of the A.F.of L., that it would be no guarantee of his particular problem, and that if anything his company, I thought beyond question would be better off executing a contract with the certified bargaining agency, namely, the United Steel Workers of America, because I did not believe that either the A.F.of L. unions as a group or individually would attempt to institute a major boycott against our union [682] in view of the fact that we supplied them with steel on all of those other work projects, and that over 99 per cent of the steel production in America was produced by members of

(Testimony of John Despol.)

the United Steelworkers of America, that no union would enter into that kind of a boycott because of the strength of all the unions concerned; that Mr. O'Keefe and Mr. Collins had unnecessary fears in regard to this boycott, which did not hurt the increase of sales of this company in the 10 years that the boycott had been in effect.

We then discussed some other phases of the labor movement, local autonomy, international unions, and so on. Mr. Collins said well, he would let us have a thousand or fifteen hundred. He raised his offer to fifteen hundred.

Mr. Garrett: May I have that last sentence, please?

(Record read.)

Mr. Nicoson: Proceed.

The Witness: I told Mr. Collins that there was no soap, that we were going to stay in the company and continue our organizational activity and press the unfair labor practice and seek to sign a contract, and that I did not believe that his maneuver which he claims he told me he did take on that of in other words switching the major part of the production to the Pioneer Electric Company by release, as he stated, to the Pioneer Electric Company, would be successful.

Mr. Collins said that the only thing O'Keefe and Merritt [683] would be doing would be primarily sales and business activities directly related to the sales activity. I told Mr. Collins that the United Steelworkers of America might very well adopt a

(Testimony of John Despol.)

policy of shutting off the steel supply of his company, and repeated the statements I had made at the previous meeting.

Q. (By Mr. Nicoson): Was anything further said?

A. Well, we discussed the weather, I believe, and we discussed, oh, our personal personalities. For instance, Mr. Collins said this meant nothing to him, that it was simply a move of his for the company, it was his profession to get these matters settled for the company and settled in the easiest way for the least amount of difficulty to his client.

I told him I understood what motives actuated him, and that while I understood Mr. Collins he didn't understand me.

Q. Was there anything further said about unfair labor practice charges, that you recall?

A. Oh, yes, Mr. Collins when he made his offer for us to accept part of his legal fees and Mr. Conway had asked him how we can save face, he says we can take a day for a Labor Board case or a day and a half and let that go on its way. Mr. Conway said, Well, what will happen when the Board rules that you have committed an unfair labor practice and orders you to bargain collectively in good faith instead of upholding the A. F. of L. contract? Mr. Collins said that he was not worried about that, that he did not believe that if we would follow the policy he had suggested that there would be [684] any C.I.O. organization left in the plant by that time.

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(Testimony of John Despol.)

Q. Is that all of the conversation that you recall at this time?

A. That is all I can recall. There was some other conversation, but it did not pertain directly to the issues between the Company and the Union, personal conversation. I don't recall it.

Q. Did you thereafter have a telephone conversation with Mr. Collins?

A. Yes, on the following Monday Mr. Collins called me and said that the offer was still open, and I told him that it was my reply that it was no soap.

Mr. Garrett: One moment please. May we have further foundation, the time and place and persons present, Mr. Nicoson?

Mr. Nicoson: All right.

Mr. Garrett: It was the following Monday?

The Witness: On the following Monday Mr. Collins called my office. That was Monday.

Q. (By Mr. Nicoson): Were you the only one on the telephone at your end?

A. Mr. Conway was on a double line in our office, listening in on the conversation.

Q. And you were about to fix the date I believe, were you not?

A. Yes, that was Monday, February 4, 1946.

Q. What did Mr. Collins say to you and what did you say to Mr. Collins?

A. Mr. Collins said that his offer was still open, and I told him that I had meant what I said at the previous meeting, that it was no soap, and that

(Testimony of, John Despol.)

we were going to prosecute our campaign to secure a signed contract, and asked him to sign a contract with the union. Mr. Collins said there was no point to signing the contract, because there were no employees. I said well, we will sign a contract anyway and let us determine later whether or not there are employees of O'Keefe & Merritt or Pioneer Electric Company. And that was about the gist of the conversation.

Q. And did Mr. Collins make any reply to that?

A. The only reply that I recall from Mr. Collins was his statement that there were no employees of O'Keefe and Merritt, therefore no point to signing a contract.

Q. Did you have any further contact with Mr. Collins relative to obtaining a contract for the United Steel Workers?

A. Mr. Collins had called our office and Mr. Conway was in Phoenix again. He asked for Mr. Conway, and would not speak with me. Our girl told him that I was present and I would be glad to talk with him, but he said no, he wanted to speak to Mr. Conway, according to my secretary's [686] statement. The only other conversation or meetings I have had with Mr. Collins have been since these hearings have occurred.

Mr. Nicoson: That is all. You may cross-examine.

Cross-Examination

By Mr. Collins:

Q. Mr. Despol, I wish to show you a——

(Testimony of John Despol.)

Mr. Garrett: I have no objection, your Honor.

Mr. Collins: I will ask you if you have ever seen this.

Mr. Nicoson: Just a minute, if I may be excused, please. I would like to offer Board's Exhibit No. 10 in evidence.

Mr. Garrett: That is the contract, is it?

Mr. Nicoson: Yes.

Mr. Garrett: Is that contract dated or was the original dated?

Mr. Nicoson: The contract that you presented to Mr. Collins that you testified about, was there any date on it?

The Witness: Yes, January 1st, 1946. This particular copy is not dated.

Mr. Collins: I have no objection to it being put into evidence on behalf of O'Keefe and Merritt. I do upon the usual grounds, as far as Pioneer is concerned, upon the ground that it does not tend to prove or disprove any issue as to them.

Trial Examiner Kent: It may be admitted.

The Witness: The copy that the Board is submitting, [687] the copy for the record, is not correct, if that date is blank, whereas the copy submitted to Mr. Collins we had typed in January 1st, 1946. We requested our wage increase to be retroactive to that time.

Mr. Nicoson: On the second line, was any name typed in there?

The Witness: Yes, the name of the company was

(Testimony of John Despol.)

typed in there where the second line, which provides entered into between O'Keefe and Merritt Company, and the name of the company was filled in and the number of the local union on the first page.

Mr. Nicoson: What was it?

The Witness: Local 1981.

Mr. Nicoson: Local 1981 was in that blank space on the fifth line, is that correct?

The Witness: That is correct.

Mr. Nicoson: I now offer it.

Mr. Smith: Your Honor, may I have the same objection and the same ruling?

Trial Examiner Kent: The record may show the usual objection. It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 10 for identification was received in evidence.)

[Board's Exhibit No. 10 set forth on pages 1665 to 1693.]

Mr. Garrett: We are going to object also—may the [688] ruling go out for the purpose of my objection? We are going to object also on the ground that it is incompetent, irrelevant and immaterial, not tending to prove or disprove any issues in this case, and point out that the contract by the foundation of this witness as can be shown by the record is shown to have been with an employer other than any with which these A.F. of L Unions have contractual obligations.

(Testimony of John Despol.)

Trial Examiner Kent: The record may so show.

Q. (By Mr. Collins): Mr. Despol, have you ever seen this particular handout before?

A. No, I have not seen it before. It appears to be one issued by the local union at my request.

Q. Was that one of those you had passed out to employees of the O'Keefe and Merritt Company?

A. I didn't pass it out. It was passed out by the local union having jurisdiction over Pioneer Electric and O'Keefe and Merritt.

Mr. Collins: I would like to offer that as Respondent's Exhibit next in order.

Mr. Garrett: May we see it?

Mr. Nicoson: Of course the record will show we have not had an opportunity to look at it yet.

Mr. Collins: I showed it to all of you during the last meeting here. [689]

Mr. Garrett: I missed seeing it.

Mr. Nicoson: Likewise I have never seen this document before.

Mr. Collins: As a matter of fact I have offered that once before, and it was ruled as inappropriate at that time.

Trial Examiner Kent: The witness at the time could not remember ever seeing it.

Mr. Collins: That is right. I offered it in evidence, tried to have it identified by Charles Spallino, and at that time I showed it to everyone.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

(Testimony of, John Despol.)

Mr. Collins: I offer this as Respondent's Exhibit next in order.

Mr. Nicoson: I object.

Mr. Garrett: No objection.

Mr. Nicoson: Immaterial and irrelevant, nothing in there that can possibly bind the Board.

Mr. Collins: The only portion I am really concerned with, Mr. Trial Examiner, is the part with the red pencil around it.

The Witness: Which is not a statement of the Union's position.

Trial Examiner Kent: It may be received. I would suggest that that be marked as Respondent's Exhibit 3. [690]

(Thereupon, the document heretofore marked as Respondent's Exhibit No. 3 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 3

The Facts

Many employes at O'Keefe and Merritt are being confused [Notation—not Pioneer employees] by the recently announced changes in operational set-up of the Company and the effect of the Pioneer Electric Company on Union representation.

The National Labor Relations Board certification stands. Changes of ownership, name, method of operation can have no effect on this. You are still the same people who chose the CIO to represent you, you do the same work at the same place. No action of the owners can deprive you of belonging

(Testimony of John Despol.)

to the Union of your choice and being represented by that Union. The United States Supreme Court has repeatedly upheld these principles and it is the established law.

The purpose of the change in operation has nothing to do with your Union activities. It has been done to avoid tax payments and to get higher prices from the O.P.A.

We are not interested in what some company stooge or phony AFL union official tells you. The CIO is the certified bargaining agent at your plant and will remain so as long as the plant stands.

Already the CIO has been able to force the Company to give a wage increase. Although this increase followed President Truman's recommendation as accepted by the USA-CIO and is retroactive to January 1st, we are not accepting it as a final settlement of the wage issues at your plant. We are accepting it as part payment on the Steelworkers Wage Program.

For the benefit of employees who have hired out since the NLRB election, we wish to say that at a Government election, the CIO won by a vote of 177 to 114 for the AFL. Since that time the Company has tried to force the employees into a phony AFL Union called the Stovemounters. However, the employees, knowing their rights under the Federal law, are refusing to be intimidated and are flocking into the Union of their choice, the United Steelworkers of America, CIO. Do not let anyone tell you that you have to join the AFL at O'Keefe

(Testimony of John Despol.)

& Merritt. Your Union is the USA-CIO which is now negotiating a contract covering working conditions and wages.

In the near future a meeting of all O'Keefe & Merritt employes will be held to inform you of the progress of contract negotiations and the prospects for further wage increases.

You can help in these negotiations by joining your Union and supporting it. The initiation fee is \$3.00; the dues \$1.50 per month. Make your check or money order payable to Local 1981 USA-CIO and mail to Box 167, Maywood, Cal. If you are a veteran or have a transfer from another CIO Union remit only \$1.50.

Issued by O'Keefe Merritt Division Local 1981 USA-CIO, 4100 E. Slauson, Maywood, Cal. PO Box 167. Telephone LA 5211, JR 8111.

[Endorsed]: Filed March 18, 1946.

Mr. Nicoson: 3?

Trial Examiner Kent: You remember I called your attention the other day that you could hold those two until you were presenting your case. Mr. Collins apparently offered the reporter a letter and an affidavit in connection with his motion which were not marked, but submitted to the reporter, and the reporter the following day called my attention to the fact that they had been handed in and I suggested that——

Mr. Nicoson: I have never seen them.

(Testimony of John Despol.)

Trial Examiner Kent: No, they have not been offered yet. I suggested that in his own case he offer those, and then they can be ruled on as respondent's exhibits 1 and 2. The record will show I think some mention of those two pages. Therefore I will reserve the numbers 1 and 2 for those.

Mr. Collins: I note it is now five o'clock. Do you wish to adjourn?

Trial Examiner Kent: Yes. I think gentlemen, we are riding along rather slowly here. I will have to request that we commence at 9:30. I won't upset that rule of twelve to two, in order to give counsel a certain [691] amount of time for conferences at noon but we will convene at 9:30 in the morning, otherwise I may put myself in a position where I will sort of hurry the other side and I will be accused of being unfair.

(Whereupon, at 5:00 o'clock p.m., March 18, 1946, the hearing was adjourned until 9:30 a.m., March 19, 1946.) [692]

Tuesday, March 19, 1946

9:40 o'clock A.M.

Trial Examiner Kent: All right, Mr. Despol, you may take the stand.

JOHN DESPOL,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Collins:

Q. Mr. Despol, I believe that you testified that I offered to split my fee with you. Wasn't it, as a matter of fact, that I offered to put it on the expense account?

A. As I recall your first meeting, you talked about earning a fee and that the longer this case went on the more fee you earned.

You also referred to your expense account.

Q. You don't remember whether it was the fee or the expense account, is that the idea? Is that the substance of your testimony?

A. It was one or the other.

Q. One or the other. O.K. If I told you I was on a monthly salary, would that seem to refresh your memory any? A. No.

Q. Mr. Despol, referring to the agreement, Board's Exhibit 10, the purported contract that you offered us, I show you [697] the Section 1 under Recognition. Didn't I agree with you that we would accept Section A? Section B, with some modifica-

(Testimony of John Despol.)

tion in the terminology? You had better answer yes as we go along here, yes or no. A intact?

A. A intact, yes.

Q. B with some change in the terminology.

A. I have to see my notes on B. I don't recall.

If you will let me have the other contract I have my notes on there. No, that one is marked pass.

Q. What do you mean by pass?

A. Well, you didn't—

Q. I think you put it on there—

A. Instead of reject.

Q. Pass that for the time being. So, we will mark this pass. I am going to put pass on here B, pass.

Now, new employees.

A. That you tentatively accepted.

Q. On union security, didn't I tell you there that we would not accept that provision but we would grant maintenance of membership with the 15 escape clause? A. That is correct.

Q. And checkoff, I agreed to, Section 4?

A. That is correct.

Q. And Section whatever it is, it is entitled Hours of Work on this, but it does not seem to be numbered. Hours of Work, [698] didn't I agree to that?

A. No, you did not. You passed that particular section and later stated that you would pay time and a half after 40 and time and a half after 8, your current practice.

(Testimony of John Despol.)

Q. What was the disagreement, if any, after we got through with that?

A. There was a question of call-in pay and there was the question of time after Saturday and double time for Sunday, which was not included in the written proposal, although it was included in your verbal statement.

Q. There are seven sections in this Hours of Work, isn't that true? A. Yes.

Q. Did I agree to A?

A. You did not agree to any of this language. What you did was verbally say you would pay time and a half after 40 and time and a half after 8, and you submitted a written statement to that effect, and you did verbally indicate that the call-in pay would be tentatively O.K.

Q. What was the actual difference between us on that section on Hours of Work? What was the actual difference, if any?

A. Part was a matter of language and part was the question of paying time and a half for Saturday as such, and double time for Sunday as such, and having a written call-in pay [699] proposal.

Q. Well, all this language was accepted, or some of it, wasn't it?

A. Not this particular language. You had your own language.

Q. I mean part of it was acceptable?

A. That pertained to the 40 hour week and the 8-hour day.

(Testimony of John Despol.)

Q. Very well. On the subject of continuation of wage rates, A was agreeable, was it not?

A. That is correct.

Q. And B was O.K.? A. That is correct.

Q. And new wage rates for new jobs, that was O.K., was it not? A. That is correct.

Q. And new wage rates for changed jobs was O.K.? A. That is correct.

Q. Now, I note this is wages continued here.

A. That is the same thing as that.

Q. In other words, we agreed to all of that?

A. You should know.

Q. Well, I mean this is going in the record, and I want to ask you. The section on wages, in the part which is entitled Wages, being 25-cent an hour increase, that I did not agree to.

A. That is correct. [700]

Q. And I did tell you I would pay the going rate in the stove industry?

A. That is correct.

Q. And that we would not take away from the employees any of the benefits that they were now securing without any union contract, isn't that so?

A. That is correct, but you refused to put that in writing.

Q. You mean I refused to put it into the contract. A. That is correct.

Q. Didn't I tell you that if you accepted the wage proposal that I was offering you, that it would be 20 per cent higher than the current wage in the stove industry?

(Testimony of John Despol.)

A. You said it would be higher than the local stove industry. As to the exact amount, I don't recall.

Q. Didn't I tell you that O'Keefe and Merritt had a pension fund which amounted to 15 per cent of the annual wage of the employee?

A. Or words to that effect.

Q. That was a contract that was in writing between the employees and the company, was it not?

A. Yes, but not between the union and the company.

Q. Very well. That would be 15 per cent of their annual wage, isn't that so?

A. I don't know. That is what you stated.

Q. Didn't I tell you that? [701]

A. That is what you said.

Q. Did I also tell you that we had a Christmas bonus of two weeks for those who were there less than five years, and for three weeks for those who were there over five years?

A. That is correct.

Q. I told you we would not take that away?

A. Yes. But you specifically requested that a clause be in the contract stating that the Christmas bonus was not subject to the contract.

Q. Well, didn't I tell you that again was a thing that was paid out of profits, that if there weren't any profits there wouldn't be any Christmas bonus? If there was, there would be?

A. That is right.

Q. A Christmas bonus of three weeks' pay, plus

(Testimony of John Despol.)

15 per cent of their annual pay, that is over 15 per cent of their total wage, is it not?

A. Under your figures it would be.

Q. If I offered you the current going rate in the stove industry, plus that, it would be, in effect, the going rate, plus 15 per cent?

A. You never offered the wage scale, you simply offered the principal of the going rate.

Q. I told you I would pay what Gaffers & Sattler were paying? [702]

A. That is correct, but the wage scale was never submitted.

Q. Didn't I tell you I would pay the same as the Western Stove was paying?

A. Yes, but the wage scale was never submitted.

Q. Didn't I tell you we would even pay the wage of Wedgewood Company, who were manufacturing stoves in San Francisco?

A. That is correct, but you never submitted a wage scale.

Q. That is a matter that you, as a representative of your union, could easily ascertain?

A. We asked for a written proposal. Our proposal was for a general increase of 25 cents an hour.

Q. Isn't it something that was easily obtainable by you, as a representative of your union?

A. All the plants you mentioned are A.F.L. plants. Whether we could obtain wage scales from those plants is questionable.

Q. You didn't try to get one?

(Testimony of John Despol.)

A. I asked you for it. You had it in your hand, and you were going to permit me to type the wage rates of Gaffers & Sattler contract. You handed it to me, and on second thought you said, "I will type it for you." You didn't furnish me a copy of the alleged contract of Gaffers & Sattler.

Q. You didn't have any doubt about getting the thing; did you?

A. I never received it. I requested it. [703]

Q. Just answer my question. You didn't have any doubt you couldn't get it?

A. I have doubts now, in the event it has been a good many weeks since I requested that.

Q. Do you still want it? A. Yes.

Q. That would be in the nature of continuing our negotiations; would it not?

My Tyre: I object to that; it is incompetent and irrelevant.

Mr. Collins: I am asking the witness. I am asking the witness does he wish to continue our negotiations.

Mr. Tyre: I have the objection on the record.

Trial Examiner Kent: Yes. He may answer.

Mr. Collins: I will withdraw the question. I will ask this witness:

Q. (By Mr. Collins): Do you wish to continue negotiations along those lines?

Mr. Tyre: I will object to that on the same grounds.

Trial Examiner Kent: He may answer.

The Witness: Along what lines?

(Testimony of John Despol.)

Q. (By Mr. Collins): Along the lines of bargaining, with the rates the rest of the stove industry are paying, permitting O'Keefe and Merritt to pay over 20 per cent more than the rest. [704]

A. Prior to the execution of the contract the unfair labor practices of the company——

Q. Just a moment. Answer my question. Let's don't deliver a speech.

A. I am answering your question.

Q. Do you want to continue negotiations or don't you? Yes or no.

A. It requires a statement of the——

Mr. Tyre: I am going to object to this line of examination. The place for negotiations is not at the Labor Board hearings. We are now charging, through the Labor Board, this company has committed unfair labor practices, among which are the refusal to bargain. I don't think it is a question of whether the company is trying to bargain with Mr. Despol on the witness stand. The question is whether or not heretofore the company has committed the unfair labor practice of refusing to bargain with the United Steelworkers of America. The questions that are being asked now are incompetent, irrelevant an immaterial.

Mr. Collins: Is it the position of counsel of the Board that the C.I.O. does not desire to bargain now?

Mr. Tyre: I have my objection on the record, Mr. Examiner. I wish there would be a ruling on it and let this testimony go on.

(Testimony of John Despol.)

Trial Examiner Kent: I will sustain the objection. I [705] think counsel may offer to reopen and resume bargaining, however.

Q. (By Mr. Collins): Now then, getting down to the section here concerning night shift bonus. Did I agree to pay a night shift bonus?

A. You agreed to maintain the present night shift bonus, but you did not agree to our proposal for 10 cents an hour for the second shift and 15 cents an hour for the third shift.

Q. Did I not tell you I would pay 5 and 10 or 7 and 10?

A. 5 and 10; that is your current practice. No change.

Q. So I did offer you 5 and 10 cents night shift differential?

A. You offered to maintain the current night shift bonus.

Q. That is 5 cents and 10 cents; is that correct?

A. That is correct. 5 cents and 10 per cent.

Q. The section on holidays, did I offer to accept any of these holidays?

A. You did not agree to our proposal to pay double time for any of the six holidays set forth in the agreement, but you did state that you would pay time and a half for a holiday worked.

Q. If they didn't work, they didn't get anything? A. That is correct.

Q. With what exception? Didn't I agree that some of them were paid holidays?

A. Not to my recollection. [706]

(Testimony of John Despol.)

Q. You don't recall any of them? A. No.

Q. You wouldn't say I didn't offer to pay some of them?

A. Yes, I would. The only notes I have of it is that you would pay for holiday work, but you wouldn't pay time and a half for all holiday work.

Q. On the section of seniority, I agreed to that; didn't I?

A. Yes, with the exception of Paragraph F.

Q. That means, giving the union officers a greater seniority than anybody else merely because they were officers? I excepted to that; is that right?

A. That is correct.

Q. With that exception, I agreed with the other eight provisions; is that true?

A. You tentatively agreed to them.

Q. Now, on the question of vacations, did we have any agreement at all, or did I make you any proposition on the question of vacations?

A. The only agreement we had on vacations was Paragraphs F and G. The rest is still an open question. You were to submit a written proposal, but you never did.

Q. But I did indicate there could be some agreement reached on vacation?

A. You indicated you would submit a written proposal. [707]

Q. The question on grievance machinery, didn't I agree to that grievance procedure? A. Yes.

Q. I believe there was one change made in that you accepted and I accepted, both. I think we

(Testimony of John Despol.)

agreed to have, instead of having Department of Labor settle our grievances, we agreed to Conciliation Service, or something of that kind.

A. Well, the Department of Labor and Conciliation Service are the same government agency.

Q. I know, but didn't I agree instead of having the Department of Labor as the final arbitrator of the disputes, didn't I suggest to you we have the American Arbitration Society in their place instead, and wasn't that agreeable with you?

A. I don't particularly recall that. If your recollection is better than mine—we have in other cases accepted the American Arbitration Association, if that is your question.

Q. That would have been agreeable with you?

A. That is correct.

Q. Grievance record, I agreed to that; did I not?

A. That is correct.

Q. Discharge cases, I agreed to that method of—

A. You had one modification.

Q. What was that?

A. That was stated yesterday. You fixed a time limit on the retroactivity of any employee receiving back pay for an unfair discharge. [708]

Q. You agreed to that, did you not?

A. Yes.

Q. Did we not agree on discharge cases?

A. Yes.

Q. Recall to employment, we agreed to that?

A. Yes.

Q. Benefits and privileges?

(Testimony of John Despol.)

A. You did not agree to that. That is where you wanted the exception on the Christmas bonus plan.

Q. With that exception I agreed to it?

A. Yes.

Q. In other words, I wanted to have some phraseology to the effect that the Christmas bonus would have to be paid out of profits?

A. No, you didn't want the union to have anything to say on the question of the Christmas bonus plan or any voice in that question.

Q. The question on leave of absence, did I agree to that?

A. Yes, except that on the question of leave for union officers and delegates you modified that for a period of not to exceed two weeks.

Q. Did you agree to that? A. Yes.

Q. So we were in agreement on leave of absence? A. Tentative agreement. [709]

Q. Veterans, I believe I told you that was referred to the O'Keefe and Merritt post of the American Legion, did I not.

A. That is what you stated.

Q. Didn't I also tell you that the O'Keefe and Merritt post of the American Legion met in the Five and Over Club room, held their meetings and took care of all matters between the returning veterans and the company and many other matters, of course, that pertained purely to veteran activities?

A. You so stated.

Q. Didn't I tell you that I discussed the matter

(Testimony of John Despol.)

with two of the leaders of the O'Keefe and Merritt post of the American Legion and they said they did not want the union to handle that for them, they wanted to handle that for themselves?

A. I said we were not handling their affairs for them. I said we simply wanted provisions in the contract to protect the returning veterans.

Q. I didn't ask you what you said. I asked you what I said.

A. That is correct.

Q. How about the veterans' committee down here, or is that part of the subject of veterans?

A. That was part of the subject of veterans. That is the committee that implements the previous section.

Q. Did I also tell you in connection with these veterans that there was a G.I. Bill of Rights that took care of [710] veterans' affairs, irrespective of the union contract, and you told me yes, but there were some other matters that you took care of that were other than the G. I. Bill of Rights?

A. I went even further than that and I said we wanted to have the G. I. Bill of Rights and the privileges incorporated in the agreement, so that the veterans could settle those questions without having to resort to the courts.

Q. I told you the American Legion Post at O'Keefe and Merritt were going to handle those matters pertaining to veterans?

A. Yes, you said the union had nothing to do with that.

(Testimony of John Despol.)

Q. The question of military leave we agreed to?

A. Yes.

Q. Group insurance, I said we would agree to that but we already had in effect one that was better?

A. You stated that you would not incorporate any insurance clause in the contract.

Q. Didn't I tell you I would not take away from them any of the benefits they now had, on this group insurance?

A. Yes, and when I asked you if you would put that statement in the contract, that you would not take them away, you said no.

Q. Well, isn't there a provision in this contract itself some place which says we do not take away any benefits that the employees now have, that is, benefits and privileges? [711]

A. It can be so interpreted, but when I asked for a specific interpretation of the group insurance benefits now existing, your answer was that it could not be included in the contract.

Q. Did I or did I not tell you that we now had group insurance in effect that was better than that which you were asking for?

A. You said parts were better, parts were worse.

Q. Very well. Now, the question of safety and health, I believe I told you that was agreeable except we would not agree to exceed the requirements of the state law?

A. That is correct.

Q. And didn't you agree to that?

A. That is correct.

(Testimony of John Despol.)

Q. On the miscellaneous provisions, I agreed to them, the bulletin board and so on, isn't that true?

A. That is correct, you agreed to everything that didn't cost you any money.

Q. And contracting work in the plant, I agreed to that, did I not? Well, everything in the miscellaneous provisions we agreed to, as I recall. I believe that is your testimony.

A. I think that is correct.

Q. Sick leave?

A. You did not agree to it. It cost you money.

Q. Well, I had a further reason, didn't I state that anybody [712] who had a week's sick leave coming would be absolutely insane if he did not take it under one device or another?

A. I said we would put reasonable limitations on the question so that the question of abuse would be handled jointly through the management and the union.

Q. In our bargaining didn't I say to you that was the same as an extra week's vacation?

A. You so interpreted it and I stated we could put reasonable terms on it to prevent that situation occurring, as we have done in other situations.

Q. And I agreed to this hours of work continued in here, did I not?

A. Yes, you agreed to the no strike clause in the contract.

Q. Very well. Maintaining the bargaining relation, I agreed to that, did I not? A. Yes.

(Testimony of John Despol.)

Q. And I told you in addition to that I would like to put in the shop rules, and I told you in that connection, did I not, that I would take those shop rules from several standard C.I.O. contracts which I had negotiated and which had already been accepted by several C.I.O. unions; isn't that true?

A. Well, that is only partly what you stated. I asked you to submit them and we would then consider whether or not they were acceptable, and you have yet to submit those shop rules.

Q. Be that as it may, did I not tell you that I would take [713] the shop rules and standard practices and so on out of currently operating C.I.O. contracts?

A. You said you would take them out of currently operating contracts. Whether or not there is any such thing as a standard practice or shop rule, I wouldn't know.

Q. Did I say that, that is what I am asking you.

A. Yes.

Q. Not whether that is correct, that is what I said.

A. Yes.

Mr. Collins: I offer to stipulate at this time that we will now enter into an agreement with the C.I.O. Steelworkers Local, enter into a contract upon the basis of the matters that Mr. Despol has just testified were acceptable to him and as to the one disputed clause about maintenance of membership and union security and so on, I offer to stipulate that we will now enter into a contract granting union

(Testimony of John Despol.)

maintenance and omitting the clause for the escape clause.

The Witness: Mr. Collins, we are in dispute on every cost factor in the contract, wages, pension, et cetera.

Mr. Nicoson: For reasons already stated, I can't stipulate to that.

Trial Examiner Kent: That is offered, of course, on behalf of O'Keefe and Merritt?

Mr. Collins: Yes.

Trial Examiner Kent: Not on behalf of Pioneer Electric? [714]

Mr. Collins: That is right.

Trial Examiner Kent: The record may so show.

Q. (By Mr. Collins): Mr. Despol, did you at any time state to me or to any of the employees of either the O'Keefe and Merritt Company or the Pioneer Electric Company, that you did not want the Teamsters in your union?

A. I said we generally excluded the truck drivers from our bargaining units.

Q. Mr. Despol, just answer my question yes or no, if you can, then explain your answer later. I want to know now, did you or did you not say to me that you did not want the Teamsters?

A. I said we generally excluded the Teamsters from our collective bargaining contracts, bargaining units.

Q. I will ask you then, do you want the Teamsters in your unit at this time?

(Testimony of John Despol.)

A. Are you referring to as far as O'Keefe and Merritt is concerned or Pioneer Electric?

Q. Either O'Keefe and Merritt or Pioneer Electric.

A. We are the certified bargaining representative for them, and as such must bargain for them and have bargained for them.

Q. Is it your statement now that you do want the Teamsters?

Mr. Tyre: I will object to that. I don't think it is relevant to this hearing, in which the record shows that the United Steelworkers of America have been certified as exclusive [715] bargaining agents for certain named groups of employees, which includes the teamsters, warehousemen, and shipping department employees. It is our contention that the certification is carried over into the Pioneer Electric Company. I think the question of whether or not the Teamsters are to be excluded from the bargaining unit, having been once included, is a matter perhaps for the Board to determine and perhaps of negotiation, not for this court at this time to determine by a question from this witness.

Trial Examiner Kent: Well, there is a possibility that there may be some ambiguity. The unit as alleged in the complaint is for production and maintenance employees, primarily, and then there are certain exclusions. The exclusions do not list the teamsters. I don't think there would be any harm in taking any testimony pertaining to any

(Testimony of John Despol.)

conversations by and between the parties at the time.

Mr. Tyre: I agree, your Honor, that there is no harm in it, but I don't see any good to be gained by it.

Trial Examiner Kent: I think it may very well be included in the record.

Mr. Tyre: If this question now is addressed to the union's present position, I don't think it is relevant. If he is directing this testimony to clear up what was intended by the certification and what was intended by the consent agreement for election—but the question now of the union's [716] present position will have no bearing upon the determining of the particular question. That is why I am objecting to this question.

Trial Examiner Kent: Read the last two questions.

(Record read.)

Trial Examiner Kent: Will you amplify your answer?

Mr. Reed: Mr. Examiner, before he answers that question, in the absence of counsel for the Teamsters I would like to enter an objection on their behalf as to the company apparently making such an offer or indicating the possibility of such an offer on behalf of the Pioneer Company, and the Teamsters should not be bound by the question or that line of testimony.

Trial Examiner Kent: Well, of course the Teamsters are obviously not bound by testimony that this

(Testimony of John Despol.)

witness may give. The Teamsters have a right to participate and put in their own case.

Mr. Tyre: I believe there is an objection now on my behalf.

Trial Examiner Kent: I think the inquiry may be proper. You can proceed.

Q. (By Mr. Collins): Will you answer the question, Mr. Despol?

A. The position of the United Steelworkers of America for O'Keefe and Merritt and Pioneer Electric is that the union [717] will bargain for all of the employees it was certified for. Prior to the consent election the union had requested the truck drivers to be excluded.

Mr. Collins: I move that answer be stricken upon the ground it is not responsive to my question.

Q. (By Mr. Collins): I will ask you again, did you or did you not ever say to anyone that you did not care to bargain for the Teamsters?

A. What I said on many occasions that it is the practice of our union——

Q. Just answer my question.

Trial Examiner Kent: I think his answer might generally be responsive. He may proceed to answer. You may answer.

The Witness: What I said to Mr. Collins and to others, it has been the practice of the United Steelworkers of America to exclude truck drivers from the bargaining unit.

Q. (By Mr. Collins): Did you ever tell Mr. Bai of the Metal Trades Council or Central Labor

(Testimony of John Despol.)

Council or whatever it is he is the head of, that you would exclude all of the employees for the purpose of collective bargaining except the Stove Mounters?

Mr. Nicoson: Just a moment. I am not objecting, but I want to get that name.

Mr. Collins: B-a-i, as near as I can understand it.

The Witness: I did not. I said to Mr. Bai that in [718] respect to those crafts in the plant, that had the matter gone to a globe type election they might possibly have won in a craft unit, and that we would stand open to take up the problems of their jurisdiction for those particular crafts.

Q. (By Mr. Collins): Did you ever tell me that the only kind of deal you would make with me would be where you could exclude everybody except the Stove Mounters?

Mr. Tyre: Mr. Examiner, I am going to object to this question. The agreement for the consent election is now in the record, and pursuant to that agreement an election was held and certification issued. Lots of things are stated in the course of compromises, in the course of reaching an agreement and in negotiating for the agreement. It is a well known rule of evidence, your Honor, which ought to be followed here, that what precedes an agreement which is finally reduced to writing ought not to be permitted in evidence at this time or any time, except insofar as that evidence may be neces-

(Testimony of John Despol.)

sary to clear up ambiguities in the agreement, that is, if there are any ambiguities. I think your Honor has already expressed his opinion that there are no ambiguities, except possibly for the Teamsters. I think therefore the question should not be allowed.

Trial Examiner Kent: Just what was intended by the use of the term production and maintenance employees?

Mr. Tyre: Let him ask that question then, your Honor. [719] I don't think it is relevant. It would simply amount to a statement as to one of the proposals of this witness. Let him ask that question as to what was meant by production and maintenance employees.

Mr. Schullman: Your Honor, may I participate in this objection vigorously. I think your Honor did permit matters that occurred prior to the certification on direct examination, and I think matters prior to the certification are important, especially as far as Local 792 is concerned, because we have contended up to the present time and are continuing as far as we are concerned we are not part of the certification, therefore any testimony which is being elicited which would show whether or not those men that are contemplated in the consent election case by maintenance and production, or any ambiguity, is permissible. I therefore urge that the counsel be permitted to cross-examine on that situation of the testimony.

Mr. Nicoson: I would like to say at this point that the Board intends to prove before it finishes

(Testimony of, John Despol.)

its case that all these parties that it is now arguing about were present at one time or another, they knew everything that was going on or occurring down into the conduct of the election on the basis of the unit as alleged in the complaint, and when I get around to it, the consent election agreement will show and the rest of the evidence will also show that the parties [720] agreed to the unit in advance, and upon that basis and upon the agreement of all the parties the Board went out and held an election in that particular unit, and as the result the Regional Director certified the result to all the parties.

Mr. Schullman: If the court please, since that is a statement of what the testimony will show, I will state the testimony will not and cannot show that Local 792 or anybody authorized by Local 792 participated in the consent or any of the matters pertaining to the consent.

Mr. Nicoson: Well, for Mr. Schullman's information, since he was not here, there is the evidence in the record now that at a meeting in Mr. Collins' office that he stated at that time that the Painters were involved.

Mr. Schullman: I think, your Honor, that was testimony made by Mr. Spallino, and I think I made a motion to strike all his testimony. I think that anything that he or anybody else might have said or could say without such authority is meaningless, and the fact that somebody said they would

(Testimony of John Despol.)

bind the Painters does not mean that they had any such authority.

Mr. Nicoson: It was brought out by a leading question on cross-examination by Mr. Collins that the Painters were there and that the men stated they were involved and were represented.

Mr. Schullman: There is no such testimony in the record, I am told by counsel. [721]

Mr. Nicoson: I think the record speaks for itself.

Mr. Tyre: By counsel you mean Mr. Garrett, is that right?

Mr. Schullman: I think that is evident.

Mr. Tyre: You didn't refer to me, Mr. Schullman. I think you referred to Mr. Garrett.

Mr. Nicoson: The record shows what it shows.

Mr. Collins: Mr. Examiner, this is costing us a dollar and a half a page for this objection. I wonder if we can't get on here.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Collins: A very interesting objection is going on here, but I wonder if we can possibly get on.

(Question read.)

The Witness: I told Mr. Collins——

Mr. Tyre: Just a minute.

Trial Examiner Kent: He may answer.

The Witness: I told Mr. Collins that our contract was for the bargaining unit certified by the National Labor Relations Board. As a result of

(Testimony of John Despol.)

the consent election we were willing to sit down and talk out the questions of jurisdiction and the equities of the A.F.L. craft unions concerned.

Q. (By Mr. Collins): Don't you remember——

A. It would be useless to sit down and talk with the Stove Mounters Union. [722]

Q. Didn't you tell me, Mr. Despol, in words as follows, or this general tenor, that "I will sign a contract with you for the Stove Mounters and let the A.F.L. have all the rest"? Didn't you make me that direct offer?

Mr. Tyre: I will object to that until such a time as Mr. Collins determines the time of that statement or the time of the question.

Mr. Collins: This is cross-examination, Mr. Trial Examiner. If I wanted to impeach the testimony of this witness, I could.

Trial Examiner Kent: He may answer. Proceed.

Mr. Tyre: I object to the question generally on the ground it is irrelevant and immaterial.

Trial Examiner Kent: He may answer.

The Witness: My answer to that question is the same as the one before.

Q. (By Mr. Collins): Did you ever tell Mr. McMurray that you would exclude his Machinists from the unit? A. Definitely not.

Q. Did you ever tell Mr. Lazzerini you would exclude his Moulders from the unit?

A. Definitely not.

(Testimony of John Despol.)

Q. Did you ever tell Mr. Cordil of the Carpenters that you would exclude his unit?

Mr. Garrett: May I have that question read?

(The question was read.)

Mr. Tyre: May I have it understood I have a continuing objection to this entire line of testimony, of all conversations pertaining to the bargaining unit prior to the consent agreement and after the consent agreement?

Trial Examiner Kent: The record may so show. The objection may go to the entire line.

The Witness: I don't recall the particulars of conversations with Mr. Cordil.

Q. (By Mr. Collins): Now, Mr. Despol, isn't it a fact that you told various heads of the various A.F.L. locals that if they would let you have the Stove Mounters you would let them have their particular crafts?

A. I asked Mr. Bassett of the A.F.L. Central Labor Council to arrange a meeting whereby we could discuss those questions that had been raised in this situation. Mr. Bassett arranged it for 2:00 o'clock on the Monday afternoon.

Q. Didn't you there at that——

Mr. Tyre: One moment.

The Witness: And prior to that, just prior to 2:00 o'clock Mr. Bassett's office called and said the meeting had been cancelled.

Mr. Garrett: May I have the last two questions and answers read?

(The record was read.) [724]

(Testimony of John Despol.)

The Witness: I do recall one particular aspect of the conversation with Mr. Cordil. We were down at the plant one morning and we were discussing the situation, and I told him then that if his organization had requested a separate unit at the time of the consent election that we probably would have consented to a separate unit at that particular time, in order to secure a consent election.

Q. (By Mr. Collins): This took place after the consent election, did it? That is, this conversation you are now referring to? A. Yes.

Q. All these conversations with the A.F.L. various representatives, such as Mr. Bassett of the Central Labor Council, occurred after the election; did they not? A. Yes.

Q. Did you tell Mr. Bassett of the Central Labor Council what your purpose in having the meeting was?

A. Yes. I told him we wanted to discuss the questions of jurisdiction and the question of the boycott and so-called unfair list of the company, and the entire situation of Pioneer Electric and O'Keefe and Merritt.

Q. Were you going to attempt to get him to take O'Keefe and Merritt off the unfair list if he signed a contract?

A. We were going to discuss that question.

Q. Were you also going to attempt to get into agreement by [725] virtue of the fact you were going to let the A.F.L. have certain locals exempted from your jurisdiction?

(Testimony of John Despol.)

Mr. Tyre: I object to that as being not relevant or material. It calls for a conclusion. It doesn't bear in any way upon the issues before the Examiner at this time.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: It may be taken.

The Witness: I don't understand the question.

(The question was read.)

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins) Were you going to try to make a deal with Mr. Bassett whereby you were going to let him have certain A.F.L. locals upon the condition you get a contract from O'Keefe and Merritt and get them off the unfair list, get O'Keefe and Merritt off the unfair list, and you give him some of the locals; isn't that true?

A. I don't understand what you mean by my giving them any locals. I don't have any locals to give them.

Q. Were you going to let the American Federation of Labor represent the locals they claimed?

A. Your answer to the previous question is no.

Q. The answer is no?

A. To the previous question.

Q. What were you going to talk to him about if you had the [726] conversation?

A. I stated what we were going to discuss with him was the questions involving the O'Keefe and Merritt plant.

Q. What were these questions you were going

(Testimony of John Despol.)

to discuss with him? That is what I want to know.

A. We never got to discuss them, so it is hard to determine what those questions would have been. We were seeking to determine what the attitude of each individual A.F.L. union in claiming jurisdiction in the plant was. We never got to that point.

Q. Mr. Despol, instead of talking in such large terms and generalities, let's get down to cases. What were you going to offer the man when you got there?

Mr. Tyre: I object to that. It has been asked and answered. I don't think it is material, anyway.

Trial Examiner Kent: I will sustain the objection.

Mr. Tyre: I don't see how he can answer it. How does he know?

Mr. Collins: He must have had some reason for going there. It wasn't to have a social call.

Mr. Reed: The proper answer would probably be not any more than you had to.

Q. (By Mr. Collins): Would that have been your answer?

A. Mr. Reed can speak for the Machinists. He is not authorized to speak for the United Steelworkers of America. [727]

Q. (By Mr. Collins): Referring to this first meeting that you had with me in my office at the O'Keefe and Merritt Company, didn't I at that time ask you to bring a bargaining committee with you? I mean a committee of employees?

A. At what time was this?

(Testimony of John Despol.)

Q. The first meeting you had with me at the O'Keefe and Merritt factory in my office.

A. I don't recall the first meeting. The first or second or third meeting you raised that question.

Q. I asked you to bring your own committee and come up?

A. That is true. And I stated we would determine when it was safe to bring a committee in your office.

Q. Were you afraid I was going to beat them up or hurt them, or something? What do you mean "safe"?

A. Because of the discriminatory practices of the management. We had determined it would be unwise to bring any employee of the company in on a committee at this particular time. We did state we might bring them all in at some future date; we still may.

Q. You won't deny it? You simply don't remember my asking you to bring them with you at this first meeting?

Mr. Tyre: I object. It has been asked and answered.

Trial Examiner Kent: He may answer.

The Witness: One of the first couple of meetings.

Q. (By Mr. Collins): You won't say no, I didn't say it the [728] first time; would you?

A. No, I wouldn't.

Q. Didn't I also tell you at the very first meet-

(Testimony of John Despol.)

ing it was contemplated some other company might take over the manufacture of our gas ranges when we got into production out there?

A. The first meeting?

Q. Yes. A. Definitely not.

Q. You don't remember me saying that at the first meeting?

A. I am sure you did not say it.

Q. Didn't I tell you that again at the second meeting?

A. No. The first time I recall you stating that was at our meeting at the bar of Carl's Restaurant on Friday, January 25th.

Q. You don't recall my saying that in the office, but would you now deny I did say it, or is it your testimony you don't remember it?

A. I am quite sure you didn't say that.

Q. You mean you merely don't remember me saying it?

Mr. Nicoson: I object to that as having been asked and answered. It is a pretty positive answer the witness has given.

Trial Examiner Kent: I think it has been definitely covered.

The Witness: Mr. Collins probably had it in his mind so [729] often he thought he said it.

Mr. Collins: I move that be stricken on the ground it is not responsive to the question.

Mr. Nicoson: No, but it is quite revealing.

Mr. Collins: May I have a ruling on that, this

(Testimony of John Despol.)

voluntary remark of the witness? May it be stricken from the record?

Trial Examiner Kent: It may be stricken.

Mr. Collins: May the remarks of counsel for the Board also be stricken, the part that it is quite revealing?

Trial Examiner Kent: What was the remark of counsel?

Mr. Collins: If we are going to have the remarks like that in, I would like to say yes, I had it in mind because I had told it to this witness several times.

Trial Examiner Kent: That may be stricken, also.

Q. (By Mr. Collins): Now, I believe you have testified, Mr. Despol, that in every meeting you had with me the question of union security came up and I invariably said we would give the maintenance of membership and escape clause, and you insisted on having a closed or union shop.

A. At no time did we request a closed shop. We asked for a union shop.

Q. The substantial difference between us was on the question of union security.

A. And all the cost and wage factors of the contract. [730]

Q. It isn't your contention you wanted O'Keefe and Merritt to pay more than 20 per cent above the going rate?

A. It was our contention you grant the employees a flat general increase of 25 cents an hour. At no time have you offered us an increase of one cent.

(Testimony of John Despol.)

Q. Do you understand the wage increase they are operating under to be an increase, or the same increase?

Mr. Nicoson: I object to that as assuming a fact not in evidence.

Trial Examiner Kent: The objection is sustained.

Q. (By Mr. Collins): Has there been any wage increase given to the employees of Pioneer or O'Keefe and Merritt?

A. No wage increase has been offered to United Steelworkers of America.

Q. Has there been any wage increase given to these employees you know of?

A. There have been rumors of wage increases that come to my attention.

Q. So then the substantial difference between us, again, was the question of union security, union shop?

A. No.

Mr. Tyre: That is objected to as having been asked and answered several times.

Trial Examiner Kent: I think it has been answered. The objection is sustained. [731]

Q. (By Mr. Collins): I told you, did I not, that the reason we would offer nothing except the maintenance of membership was because of the strong A.F.L. membership and the fact we didn't want to incur the enmity of the A.F.L. We wanted off their unfair list? Isn't that true?

A. That was part of your statement.

(Testimony of John Despol.)

Q. In fact, at every meeting I discussed the question of the unfair list?

A. Just about every meeting.

Q. Didn't I tell you the O'Keefe and Merritt Company, during the war, had greatly increased their facilities and the speed of their production, and they wanted to go into the northern markets, to wit, San Francisco and Seattle, and so on, where, in their opinion, they couldn't sell their product without the A.F.L. permission; isn't that right?

A. You stated words to that effect.

Q. Didn't I also tell you that our hot water heaters and floor furnaces would not be installed by A.F.L. help if we were on their unfair list?

A. That was your statement.

Q. Did I not tell you every other stove factory in California was signed up with the A.F.L.?

A. I think you said that.

Q. Now, at the third meeting you held with me in my office on January 3rd, didn't I again ask you to bring your own [732] committee of employees, when you objected to the committee of employees I had arranged to come up there?

A. Yes, you did. And I stated what I have previously stated——

Q. You didn't want to talk about money matters in front of the A.F.L. committee?

Mr. Tyre: Just a moment. May I ask the Examiner to instruct counsel to permit the witness to answer the question fully before the next question is asked?

(Testimony of John Despol.)

Trial Examiner Kent: I think it might be better practice, yes.

Mr. Collins: I concede that the objection is well taken. I thought the witness had finished. I apologize to the court and counsel.

The Witness: I stated what I previously stated. We objected to any committee alleging to represent the A.F.L. being present in any future meetings, and that——

Q. (By Mr. Collins): You mean—proceed. Excuse me.

A. And that the United Steelworkers of America would determine when it was wise to bring in a committee of employees in the plant to negotiate the contract, or whether we would request all employees to participate in the goldfish bowl negotiations.

Q. To be specific, when you said American Federation of Labor being present, you meant these employees were members [733] of the American Federation of Labor?

A. No. My understanding was, from your statement, that they claimed to represent the American Federation of Labor. I have never had any proof to that effect; that is your statement.

Q. Didn't I tell you I merely sent out to the factory to have a group of representative employees, and whether they were A.F.L. or C.I.O. I didn't know?

A. No. You stated you wanted the A.F.L. peo-

(Testimony of John Despol.)

ple in the plant to know what was going on. You wanted it open and above board.

Q. Didn't I say I wanted everyone in the plant to know what was going on?

A. That is right. And I said we would provide you with that opportunity.

Q. Didn't I tell you I didn't know anything about the boys, except they were working in that factory?

A. I don't remember words to that effect. I assume you know who you picked.

Q. Didn't I tell you I didn't pick them at all, I sent out in the factory to have three or four representative employees of the O'Keefe and Merritt Company or the Pioneer Electric Company to come in and sit down and listen to our controversies?

A. You didn't tell me how you selected them. I still don't [734] know. Or who selected them, if you didn't.

Q. I will tell you that Mr. Johnnie Levascos selected them. Now, then —

Mr. Nicoson: Will you also say it was at your request?

Mr. Collins: No, I will not say it was at my request. I sent out in the factory to have some boys selected. I didn't care who they selected.

Mr. Nicoson: I move to strike counsel's remarks as a voluntary statement.

Trial Examiner Kent: It may be stricken.

Mr. Schullman: I think the interpretation by the Board's counsel——

(Testimony of John Despol.)

Mr. Nicoson: I agree to that. They both should go out.

Trial Examiner Kent: The remarks of both counsel may be stricken.

Q. (By Mr. Collins): Mr. Despol, during the war you served on a number of occasions as labor representative on the War Labor Board.

Mr. Nicoson: That is objected to as being immaterial.

Mr. Collins: I submit this is cross-examination.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: The objection is sustained.

Mr. Collins: Objection sustained?

Trial Examiner Kent: Yes. [735]

Mr. Collins: I wish to make an offer of proof. At this time I offer to prove, by the testimony of this witness, if I am permitted to bring it out, that as labor representative on the War Labor Board during the war he, on a number of occasions, agreed to the maintenance of membership and the escape clause to a number of contracts presented to the War Labor Board to approve or disapprove.

Mr. Tyre: That being the purpose of the question, I will join in the objection made by Mr. Nicoson.

Mr. Nicoson: I move the offer be stricken. It not only is immaterial, but it also goes to the quasi judicial capacity in mind with this witness; it can't be examined into here.

(Testimony of John Despol.)

Mr. Collins: I submit that such a thing—in all the law of the land there is not a rejection of an offer of proof.

Trial Examiner Kent: The offer will be denied.

Mr. Schullman: As a matter of legal procedure, I agree with counsel. No court can deny an offer of proof. You don't accept the evidence of the witness. An offer of proof, as such, must go into the record. It can't be denied. There is no law, of the N.L.R.B. or under the legal decisions, that will permit it.

May I say previous decisions in hearings in this court, in the N.L.R.B., we had about four days of offers of proof before different Trial Examiners, and they were accepted, not [736] from the standpoint the witness was permitted to testify, but the offer, as such, must be accepted.

I would like to see any law contrary to that. I think counsel is perfectly right. I think we ought to have some legalistic background of these things.

Mr. Collins: Mr. Trial Examiner, if I understand you, you have rejected my offer of proof. I wish to inquire, is the matter going to be stricken from the record or will it be there for the review of a court of law, if it is necessary?

Trial Examiner Kent: Yes, your offer, as stated, of course, is in the record.

Mr. Collins: Very well.

Q. (By Mr. Collins): Now, I believe you testified, when I asked you to bring your committee, you said that at an appropriate time you would have a

(Testimony of John Despol.)

goldfish bowl negotiation or something of that kind?

A. If that proved to be necessary.

Q. You didn't want to discuss these various money matters in front of this committee; is that true?

A. That is correct. It wasn't our committee.

Q. Now then, I believe you said, in connection with the question of veterans' privileges, or something like that, in your contract, that one of the veterans at the meeting agreed with you that it was a good thing. Which veteran was that?

A. I don't recall the gentleman's name. But because he had a veteran's jacket on I asked him didn't he think that was a good clause for a veteran?

Q. I try to have a league of nations at all these meetings. Was he an Italian, Mexican-American, Negro, or the White-American? Do you recall.

A. The only thing I am sure of is that he was not a Negro; beyond that, I don't know.

Q. That was the meeting on January 8th, the fourth meeting, I believe, you testified, according to my notes, that this conversation took place?

A. It was the second meeting after the new year; that is the thing I am sure of.

Q. January 8th, our fourth meeting.

A. January 8th, I think it is.

Q. At which meeting, according to your notes, you testified we had Collins, Despol, Cunningham, Castro, Daley and Arlotti present?

(Testimony of John Despol.)

A. Whatever names my notes stated is what I testified to.

Q. Do you have your notes here, so you can refresh your [738] recollection?

A. It may be that that particular question of mine was directed at the first meeting in January, rather than the second meeting in January.

Q. I am not trying to confuse you.

A. Cunningham, Castro and Daley and Arlotti were at the January 8th meeting.

Q. That is the meeting you were referring to, and I have taken down in my notes.

A. That is correct.

Q. Very well. You know it was not a colored man. Do you know whether or not it was a Mexican?

A. I am sorry. I don't recall as to the nationality. I don't normally inquire into those questions; no concern to me, his nationality.

Q. Have you had a chance to compare the contract that you submitted to the O'Keefe and Merritt Company with that which has been signed between the A. F. L. and the Pioneer Electric Company?

A. I haven't even read the contract signed between the Pioneer Electric Company and the A.F.L. I glanced at it, the first page; that is as far as I got.

Q. In our meeting of January 25th, which would have been our fifth meeting, I believe you testified that you and Mr. Conway appeared at that meeting.

A. No.

Q. I guess you came alone?

(Testimony of John Despol.)

A. I came alone, and you stated you were glad to see me alone.

Q. Didn't you tell one of the committeemen, Mr. Johnny Levascos, not to come to the meeting, you didn't want anybody at those meetings?

A. I don't recall when it was I told Levascos—one time I told him I hoped he would not attend any more meetings because no meetings would be conducted with his presence there from there in.

Q. Did you tell him you hoped he wouldn't come there, or he better not come there?

A. He better not come there, there wouldn't be any meeting.

Q. You didn't tell him what it meant, you merely told him he better not come there.

A. I told him he better not come there, there wouldn't be a meeting.

Q. Didn't you tell me not to have any committeemen there at this meeting on the 25th of January?

A. That is correct. We would determine when we needed a committee from the United Steelworkers of America.

Q. Didn't I, at this meeting, tell you we would agree to pay the same rate you got for the employees at that time out on strike at Boyle or Continental Can? In other words, [740] whatever rate they got we would pay the same thing, without the strike?

A. And I asked you if that meant the same

(Testimony of John Despol.)

increase that was secured at the Continental Can, and you said no.

Q. In the course of our discussion, didn't I tell you, "Maybe we are paying too much now. We are not going to give an 18-cent increase or a 25-cent increase or 30-cent increase over our current rate." I would agree to meet the rate you ultimately secured for these people, without any strike?

A. I think you made such a statement, but, of course, such a statement is an impossible one to put into effect because the operations are different in a can plant as compared to a stove manufacturing company.

Q. We have a punch press operator in a stove plant as well as a can plant?

A. The operations are different. The can plant operations are all automatic or semi-automatic.

Q. We have automatic and semi-automatic operations in a stove factory; don't we?

A. Yes, but not the same type as a can factory.

Q. Isn't the setup of the Boyle Manufacturing Company exactly the same as at the Pioneer Electric Company? I say isn't the Pioneer Electric or O'Keefe and Merritt setup and Boyle exactly the same?

A. I wouldn't say it was exactly the same. You have some [741] similar operations. In the case of Boyle, they raised their rates 18½ cents an hour.

Q. It is the same type of work?

A. In some departments.

Q. Well now, Mr. Despol, did I not tell you we

(Testimony of John Despol.)

would pay the same rate for the same operations after they got their increase and after you got through with the strike at O'Keefe and Merritt, or Pioneer Electric, pay the same thing, whatever you got out there, whatever the steel industry finally settled, we would pay it? Didn't I tell you that?

A. Yes. And I asked you if that meant you would match the increase at all other plants we were bargaining with; made every one sign a contract for 18½ cents above their previous rates.

Q. Now, then, did I not, in one of the negotiations with you in the office there, and in front of this committee, tell you that the Pioneer Electric Company, or some other company was going to take over the manufacture of the gas ranges, or, at least, I thought they were going to; negotiations were then being conducted?

A. No, not in front of that committee.

Q. Didn't you tell me at that time that you wouldn't—or words to this effect: That you wouldn't take a thing like that lying down, that you had gone to too much trouble and put in too much organization expense to stand for it? [742] Didn't you use those words or words to that effect?

A. I believe I told you that at the bar.

Q. Didn't I then tell you—

A. You told me that at the bar.

Q. Wherever the conversation took place, did I not then tell you I would see if I could get my clients to help your union cover that expense in the

(Testimony of John Despol.)

interest of maintaining peaceful relations out there?

A. I don't think you ever offered to help my union cover expenses. You offered to help me personally.

Q. Now, didn't we have a discussion in the office, and on numerous occasions, to this general effect: First of all, I told you that the Los Angeles Police Department was giving ample protection out there. Didn't I say that? A. Yes.

Q. And didn't I tell you that the American Federation of Labor would have their representatives out there any time you had demonstrations or strikes, or what not, in an attempt to get their men through the picket line?

A. Yes, you promised me that.

Q. Didn't I also tell you that if there was any difficulty out there, there would be a lot of bloodshed around, because of the competing factions?

A. You promised me that.

Q. Didn't I tell you I hoped we would settle this matter [743] in court or some peaceful method, rather than to do that? Didn't I promise you that?

A. You promised me that, too, I think.

Q. Didn't I also tell you, in connection with your threat to bring about some sort of an economic boycott, to wit, keeping O'Keefe and Merritt and Pioneer from getting steel, didn't I tell you that O'Keefe and Merritt and Pioneer bought their steel from sources they had for 25 years, and that they

(Testimony of John Despol.)

bought it from so many jobbers you wouldn't have any luck trying to cut the steel off?

A. That is correct.

Q. Didn't I tell you that if you got the teamsters or carpenters or others out, the railroad workers wouldn't handle the steel you were trying to ship to other factories? A. That is right.

Q. Didn't I tell you that since John L. Lewis, since he had gone over to the A.F.L. Camp, he might shut off your coke, so you wouldn't be able to make steel? A. That is what you said.

Q. And didn't I tell you that the only logical thing for you to do, in an attempt to fairly—was to take this dispute where you now have it, before the N.L.R.B.? Is that what I said?

A. Yes, and I said we would not restrict ourselves to before the N.L.R.B. [744]

Q. I told you, when you asked if we would discriminate against any of your people that came up to testify, I said, no, as long as they tell the truth; isn't that so?

A. I think that is what you stated.

Q. So, after all, in various and lengthy colloquy, in which we went into more things than I have now discussed with you, didn't I tell you that if you would keep the thing peaceful we would see your union didn't lose anything in their organizing expenses they had gone to out there?

A. You didn't say anything about the union losing anything. You said you would see it was worth my while.

(Testimony of John Despol.)

Q. Didn't I always treat you as the representative of the union? Was this offer made to you on behalf of your union?

Mr. Tyre: I object to that. It calls for a conclusion as to what was in Mr. Collins' mind when this offer was made.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Well, I wasn't trying to sign a contract with you as an individual with the Pioneer or O'Keefe and Merritt; was I?

Mr. Tyre: Object to that on the same ground.

Mr. Nicoson: I also object. He is assuming a fact not in evidence; trying to sign a contract with anybody.

Mr. Collins: I withdraw the question and I will reframe the question. [745]

Q. (By Mr. Collins): Was I negotiating with you as an individual for O'Keefe and Merritt?

Mr. Tyre: Again I object, your Honor, as to what was in this man's mind when he was negotiating; that is, in Mr. Collins' mind.

Mr. Collins: What is the ruling?

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Collins): Did you ever represent yourself to me as an individual trying to sign a contract out there, or as a representative of the Steelworkers?

A. I always represented the United Steelworkers of America.

(Testimony of John Despol.)

Q. Therefore, when I discussed these matters with you of signing contracts, you knew I was talking about the Steelworkers; did you not?

Mr. Tyre: I object to that. It still requires a state of mind as to what was intended by Mr. Collins.

Mr. Collins: Does Mr. Tyre want the truth to get into the record?

Mr. Tyre: If Mr. Collins wants to take the witness stand, we will be glad to examine him.

Mr. Collins: If you want to testify, counsel, I will let you get up there.

Trial Examiner Kent: I will sustain the objection. Go ahead.

Q. (By Mr. Collins): Now, Mr. Despol, getting back to the [746] days gone by, I have known you around town for approximately how long?

A. Well, I met you once in 1938—no, '39 or '40; '39 or '40. Since then I don't think I have had any direct relations with you except on the case of running into each other.

Q. We have been running into each other around town ever since that date occasionally and probably infrequently until the last couple of years; isn't that so?

A. I don't think I ran into you during the war years in any labor questions.

Q. Don't you recall having a hearing before the War Labor Board, and I think it was——

A. Yes.

Q. ——the Voight Rubber Company or the

(Testimony of John Despol.)

Whiting-Mead Lumber, and you had a back injury—— A. The Voight Rubber.

Q. ——you were conducting the hearing lying on your back, because you had a back injury.

A. Yes.

Mr. Collins: I can't very well forget it. It was an unusual procedure.

Mr. Garrett: May I have the last two questions and answers read?

(The record was read.) [747]

Mr. Garrett: By the way, I just noticed—my hearing is not very good—I hear a great deal better with that door closed. I wonder if we might keep it closed.

Trial Examiner Kent: Yes. [748]

Q. (By Mr. Collins): Now, Mr. Despol, do you recall during the course of the hearing that—I think the man's name was Snyder, wasn't he, the Board's representative?

Mr. Nicoson: Objected to. What went on at that hearing is all immaterial.

Mr. Collins: This is cross-examination, if the Board please.

Trial Examiner Kent: Will you show me how it is possibly germane to the issues?

Mr. Collins: I don't want to disclose the purpose of this until I get along.

Mr. Nicoson: I object to it as being immaterial.

Mr. Collins: This is a preliminary question.

Trial Examiner Kent: I will take it, subject to a motion to strike, assuming that the——

(Testimony of John Despol.)

Q. (By Mr. Collins): Do you know who the Board's representative was at the hearing?

A. I was the labor member of the Panel.

Mr. Nicoson: May I have an objection to all this line?

Trial Examiner Kent: Yes, your objection may be treated as continuing to the entire line.

Q. (By Mr. Collins): At this particular hearing, the War Labor Board appointed the public representative?

A. They appointed also the labor and industry representatives.

Q. This one man who was appointed by the Board, I believe he [149] was an employee of the Board, and I believe his name was Snyder. He was a slightly built, blue-eyed gentleman, and rather young. Do you recollect having a drink with him and me down after the hearing was over with?

A. I have had so many drinks with you I am just trying to think whether I had one then or not. I believe I did.

Q. It was down in the bar next to the——

A. Berliner's.

Q. I can't remember the name, Berliner's, I think it was, yes. Do you remember having a drink with me down there and with the Board representative? A. We may have had a drink.

Q. As a matter of fact, we had a drink down there every evening after the hearing was over, did we not?

Mr. Nicoson: I object to that as certainly not

(Testimony of John Despol.)

preliminary. I move to strike the whole testimony along this line on the obvious ground that it is immaterial, and I object to further questions on the same ground.

Mr. Collins: I do not intend to disclose the purpose of my cross-examination. I will submit to the rulings of the court.

Mr. Nicoson: These have certainly gone beyond preliminary questions, now, your Honor.

Trial Examiner Kent: No, I think this last question is entirely unnecessary, but you may proceed. I will take it [750] subject to the motion to strike this entire line.

Q. (By Mr. Collins): It was after working hours, was it not, Mr. Despol? A. Yes.

Q. At this meeting we discussed a number of things, did we not, including what I thought of the War Labor Board and what I thought, that there should be a court set up to try this kind of matters so there would not be a lot of people getting hit in the head at the back ends of factories. Isn't that true? Do you recall this conversation?

Mr. Nicoson: I object to all this as immaterial.

Trial Examiner Kent: I can't see how it can possibly be germane to these issues. Would you mind stating your purpose briefly?

Mr. Collins: Not in front of the witness. May we have the witness excused from the room?

Trial Examiner Kent: The witness may go out.

Mr. Collins: I don't think it is necessary for him to go out. He will tell the truth, anyway. The

(Testimony of John Despol.)

purpose of this is to show I had a number of conversations with Mr. Despol after work hours and outside of speaking of my representation of any particular client, and I submit it is a perfectly proper question on cross-examination. There are things I said that could be construed as against the interests of the client, and I was telling Mr. Despol those things personally, [751] and he told me things personally that might be construed as against the interest of his unions, and if necessary, I am ready to go into those conversations, but I am merely trying to establish the fact there was nothing unusual about Johnny and I having a drink together and talking about a lot of things.

Trial Examiner Kent: What advantage would that be to us? It might tend to show that your relationship——

Mr. Collins: You are now forcing me to disclose the purpose of the cross-examination, Mr. Trial Examiner.

Trial Examiner Kent: ——was generally friendly.

Mr. Collins: Mr. Trial Examiner, I now wish to cite this as misconduct on the part of the Trial Examiner, forcing me to disclose my intent on the cross-examination of the witness in a very vital issue of this case. The witness is now thoroughly forewarned as to what to expect of cross-examination and he knows exactly what he has to avoid and what he has to say now.

(Testimony of John Despol.)

Trial Examiner Kent: I offered to exclude the witness.

The Witness: So help me, I don't know what you are getting at.

Mr. Nicoson: That is a rather strange objection, because just before Mr. Collins stated what he was going to prove by this witness he said—you offered to have him excluded and he said it didn't make any difference, because he would [752] tell the truth, anyhow, and now in the next breath he says he is going to evade something.

Mr. Collins: The disclosure was before the offer to exclude the witness, Mr. Nicoson. May I proceed? What is the ruling?

Trial Examiner Kent: Well, I would like to know the purpose of it. Maybe you better step out.

(The following took place out of the presence of the witness:)

Mr. Collins: The purpose of this cross-examination, and bear in mind we have a room full of witnesses who are going to back up this story and they already hear this. However, the purpose of this cross-examination is to show that at the evenings in question at Carl's Cafeteria wherein I had drinks with Mr. Despol, it was after 5:30, after 5:30 in the evening. I was an employee of O'Keefe and Merritt Company up until 4:30. This was a personal affair between Johnny and me, having some drinks and discussing a lot of things with me. He is now testifying to some of them, some which he is not testifying to in court. I intend to show that

any alleged misconduct of mine in attempting to get this man on my expense account or his union on the expense account were matters that were outside the scope of my authority as attorney, and were matters that were being discussed between us in a purely confidential relationship as friends. Anything [753] that was taken up with him would have subsequently have had to have been ratified with my clients, which opportunity was never given, because the charges were filed and hearing commenced upon immediately. It shows anything that happened was after work hours, just like anybody else would talk. We talked about a lot of things, even the question of Communism came up in those meetings, brought up by the union, not by me. That is the first time I heard about it. So that is the purpose of the cross-examination then, to try to find out, it was after work hours, nobody was present. I wish the record to show at this time that Mr. Conway of the C.I.O. Steelworkers is there conferring with his client and he has heard everything I have had to say, so now there is no further purpose in cross-examining this witness or anybody else.

Mr. Tyre: May I have that last statement read back to me, I didn't hear it.

Mr. Collins: I said there is no purpose in cross-examining Conway. He has heard all of this and he can't be confused.

Trial Examiner Kent: The witness may return.

(The following took place in the presence of the witness:)

(Testimony of John Despol.)

Mr. Collins: May I proceed?

Trial Examiner Kent: You may proceed.

Q. (By Mr. Collins): Mr. Despol, the meeting that we had at [754] Carl's Cafeteria, after our meeting at my office on the 25th of January, which was our fifth meeting, started out by the invitation, "Let's go out and have a drink," is that right?

A. That meeting started by "Let's go out and have a drink?"

Q. I mean after we had finished discussing matters pertaining to my client in my office, one of the other of us said, "Let's go out and have a drink."

A. Yes.

Q. And we went to Carl's Cafeteria and we had had drinks there a number of times before that, had we not?

A. Yes.

Q. At which times we had discussed a variety of things.

A. That is true.

Q. Some of which might have been construed as unfavorable by various clients and operations that I represented, is that true?

A. I don't think that is true.

Q. Didn't occasionally I tell you that I thought this employer or that employer was guilty of some unfair activities so far as his relations with unions were concerned?

A. You might have said that with respect to some of your employers, but I don't think you named any of them, any particular employer.

Q. Did I further tell you certain things, that

(Testimony of John Despol.)

I thought that certain agencies that were organized to settle labor [755] relations were biased in favor of certain unions and against other unions?

A. You certainly said that.

Q. Didn't I also tell you that I thought that my opinion was that the method of handling these cases would be to have Congress assemble and pass an Act and set down rules and regulations for procedure under which people can hire and fire, that was my theory exactly, to have it written out, isn't that true?

A. Yes, that is what you said.

Q. This was after working hours, and you understood I didn't intend, I didn't tell you we would continue our negotiations at Carl's, did I?

A. No.

Q. So, after we discussed a variety of things and you got to telling me about how much expense and how much trouble you had gone to, I said, "Well, we will take care of the expense, I will see if I can get my clients to take care of that organizing expense." Didn't I tell you that?

A. I told you then——

Q. Just answer. Didn't I tell you that at my very first meeting at Carl's, not the one where you had all the witnesses around, but at our very first meeting at Carl's?

A. I told you that——

Q. Isn't that what I told you? Isn't that substantially [756] true, now?

A. I told you that the union had put on a long organizational campaign both then and in previous years, and that under those circumstances,

(Testimony of John Despol.)

what we better do—further than that, that the important thing at stake was the principle of the right of employees under the Wagner Act to choose their own union.

Q. I know, but we were not talking in court then, we were not talking in high sounding phrases about the Wagner Act and so on.

A. I think we discussed that.

Q. We just talked about the simple thing, just got down to the fundamental we were talking about, didn't I tell you, at least didn't I tell you in this first meeting at Carl's that some organization I thought was going to take over the operation of the O'Keefe and Merritt Company?

A. Yes, you said that.

Q. Didn't I tell you at that time that one of the reasons that they were to take it over was because there would be considerable tax savings for the O'Keefe and Merritt Company if they took it over?

A. Yes, you said that.

Q. And didn't I also tell you, in line with this Kaiser-Fraser deal that there would be O.P.A. concessions granted under similar circumstances? [757]

A. Yes, you said that.

Q. I don't know whether I told you or not, but the concessions would amount to a saving of approximately \$30,000.00 daily, did I tell you that?

A. I don't think you mentioned the amount.

Q. Not figures, I just told you that it was a substantial amount.

A. Yes.

(Testimony of John Despol.)

Q. Didn't I tell you at that meeting that there were a lot of young fellows around O'Keefe and Merritt Company that were very well thought of by O'Keefe himself, and that he wanted to give an opportunity to them, and that is why the Pioneer had been set up originally?

A. I think you said something to that effect.

Q. And particularly, didn't I tell you what a wonderful salesman this Mr. Durant was, how the company wanted to help him out some way, and they had promised him help during the war?

A. I think you said that Mr. Durant had been the engineer of O'Keefe and Merritt and that he would be heading the Pioneer Electric.

Q. Didn't I also tell you that he was the engineer and practically in charge of the Pioneer Electric all during the war?

A. Yes. [758]

Q. And didn't I tell you that the Pioneer Electric Company had done this generator wiring and so on so much cheaper than anyone else—I will reframe the question. Don't you recall me telling you that O'Keefe and Merritt had attempted to do the wiring themselves at first, and then they had seen that the work done by the Pioneer was so much cheaper than anyone else that Pioneer Electric did it from the beginning to the end of the war?

A. No, I don't think you told me that.

Q. Do you recall specifically my telling you that those demonstrations that you had been holding out there had delayed our negotiations?

A. Yes.

(Testimony of John Despol.)

Q. Took up a lot of my time running around getting police protection and making speeches to these boys that they were free to come on to work, and so on?

A. Yes, you said that you made two speeches, as I recall.

Q. No, I made one speech. A. One speech?

Q. It was an announcement, telling them that the Police Department would protect them so that they could come in, didn't I tell you that?

A. Yes.

Q. Didn't I tell you, also, that those preliminaries, that we had, were just sort of battle conditioning for the [759] employees so that they would come up and see a demonstration out there that they wouldn't be in fear of it, because they had gone through two or three times before, in my opinion, that was the result it would have? [760]

A. Yes, you said that at the time.

Q. And that we had the police there and if you wanted to force this into a strike they would still be able to get in there and work?

A. Yes, you said that.

Q. Didn't I also tell you at that very time that we didn't have any steel, we were reconvertng, and it would be a very bad time for a strike?

A. Yes, you said that. You worked out our strategy for us.

Q. Do you remember now also that I told you that the best way for you to handle this problem was to go to court with it? A. Yes, you said that.

(Testimony of John Despol.)

Q. And do you particularly remember my telling you that the only thing that I would object to around there, the only thing I thought was unfair, would be a lot of C.I.O. people and A.F.L. people and neutral people getting hurt around the factory in the event there was an ill advised strike?

A. I think you said words to that effect.

Q. And so as a matter of fact didn't I tell you that if you would come to the courts and let the courts decide this matter, if that meant any loss to the union, I would see that it was recompensed out of an expense account, would not lose its organization expenses, didn't I tell you that?

Mr. Nicoson: Just a minute. I object to that, what is in the mind of the union. That is in Mr. Collins' mind. [761]

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Mr. Despol, didn't I tell you that I would take care of the organizing expenses through my expense account? Didn't I say, "Don't resort to violence, but come into court and let the courts determine the issue. Didn't I tell you that or words to that general effect?

A. I had no personal organizing expenses. You discussed the question, the expenses that the union had been put to.

Q. Whether I mentioned your personal expenses or union expenses——

A. I don't know what you meant.

Q. We are not asking what you thought now. Didn't I use those general words?

(Testimony of John Despol.)

A. You discussed the question of the expenses of the union.

Q. Did I discuss the question of my expense account, did I not? A. Yes.

Q. Didn't I tell you that I would see if my clients would take care of it, do you recall that?

A. I don't recall that exact statement.

Q. You would not deny that was said, though?

A. No.

Q. Now, then, to get back to Friday the 1st when we had the—by the way, I am very curious to find out how you maintained that table empty in a crowded place like that. [762]

A. It was not crowded when we came.

Q. You must have had a couple of boys leave.

A. Now, Cecil, you should have been more observant. It was crowded about a half hour after we had arrived and all sat down.

Q. Now, then, at this meeting on February 1st in Carl's Restaurant, in front of your numerous witnesses, didn't you tell me that the best deal you would make would be to let the A. F. of L. have all the factory except the Stove Mounters, that that was the best deal that you could make? Didn't you say that?

A. No, I asked you what would be your position if the A. F. of L. and C.I.O. could come to an agreement on the question of jurisdiction and bargaining units, whether or not you would consider it.

Q. In other words, you offered me, if the A. F.

(Testimony of John Despol.)

of L. would agree to that, you would consider it, that would be your best proposition, in other words?

Mr. Tyre: Just a minute. I will object to the question.

Mr. Collins: The answer was yes.

Mr. Tyre: Just a minute. I move the answer be stricken from the record. I move that the answer be stricken and that counsel be requested to rephrase his question, and ask the questions separately.

Trial Examiner Kent: Read the question. [763]
(Question read.)

The Witness: No, I didn't say this——

Trial Examiner Kent: Wait a minute. Was there an answer taken to that?

The Witness: I didn't answer.

Trial Examiner Kent: You might reframe the question.

Q. (By Mr. Collins) Didn't you tell me if it was agreeable—didn't you ask me would I consider a proposition to this general effect, that if the A. F. of L. would agree to concede the Stove Mounters to the Steelworkers, that you might consider conceding the rest of the employees to the various A. F. of L. locals affected? What I am trying to get at, didn't you tell me that you wanted, all you wanted actually was the Stove Mounters, or some words or phraseology like that?

Mr. Tyre: I will object to that again, another double barreled question. If counsel would permit the witness to answer the first question and leave

(Testimony of John Despol.)

out the second one, we could proceed a little more orderly. In the present state of the record that is a double barreled question.

Mr. Collins: The witness understands my question.

Trial Examiner Kent: I think the witness may answer if he understands. If you have any doubts of the question——

The Witness: I don't know which particular question I am answering now, but I will state that—— [764]

Q. (By Mr. Collins): I want to know about the Stove Mounters. That is what you want, isn't it, or that is what you wanted then, isn't that true?

A. I couldn't state whether we were considering changing the bargaining unit or the question was mentioned in discussing the question with the A. F. of L. We did go into discussions of that nature.

Q. Well, was the proposition made to me in any way in any phraseology that you care to use to the general effect which meant that you would concede to the A. F. of L. everything except the Stove Mounters, if it was agreeable all the way around?

Mr. Tyre: I object. That has been asked and answered twice or three time now.

Mr. Collins: Let me answer it. If he would answer it once, I would not have to keep on asking.

The Witness: Shall I answer that?

Trial Examiner Kent: Yes, you can answer that.

The Witness: I said we were willing to sit down

(Testimony of John Despol.)

and discuss the question of the bargaining unit and the question of the Stove Mounters unit, both with the A. F. of L. unions concerned and with the company, and with the men involved, but we have never been able to effectuate that particular suggestion.

Q. (By Mr. Collins): The purport of this discussion then [765] was to the general effect that if it was agreeable all the way around you would concede the Stove Mounters are the only ones you actually wanted, isn't that true?

A. No, I never said that.

Q. Whether you actually wanted them or not, Mr. Despol, I am not trying to limit you or take you into some kind of a trick question——

A. For example, the Machinists have never had a membership in the plant prior to the execution of this Pioneer Electric contract. Mr. Reed indicates he has one. Well, there may be one, I will concede him that.

Mr. Reed: I had one. We now have all of them.

The Witness: If he had one, it escaped my notice. I don't think in a globe type election the Machinists would have had any chance of winning, with the one man vote.

Mr. Reed: That is your opinion.

The Witness: That is my opinion.

Q. (By Mr. Collins): Now, Mr. Despol, to get back to this fatal evening again, I still would like to get this one thing in my mind clearly. If it was agreeable all around, you were willing to discuss

(Testimony of John Despol.)

the question of letting the A.F.L. have everything except the Stove Mounters?

Mr. Tyre: Objected to as asked and answered.

Mr. Collins: Well, it has not been answered. I submit there is no answer before this court. [766]

Trial Examiner Kent: I think we might save time by letting the answer be taken.

A. We were willing to discuss the question.

Q. (By Mr. Collins): In this place there were a lot of people, were there not, the place was crowded, all the seats at the bar were taken, and after we sat down every seat in the house was filled, was it not?

Mr. Tyre: May I have the counsel determine whether this is the first or second meeting at the bar you are now referring to?

Mr. Collins: This is the second meeting at the bar, the one which the witness identified as February 1st, after 5:30.

Mr. Tyre: Just a minute. I will object to that. I think the testimony is that the meeting took place at 4:00 p.m.

Mr. Collins: Well, what time did that meeting take place on February 1st at Carl's Restaurant wherein you had your various witnesses?

A. At 4:00 p.m. it started.

Q. What time did we finish?

A. Oh, I would say about 20 after 5:00.

Q. Now, then——

A. Quarter after 5:00.

Q. Are you familiar enough with the place to

(Testimony of John Despol.)

know whether [767] or not it is their rush hour, immediately after people getting off work and going home?

A. From about a quarter of 5:00 on it is the rush hour.

Q. When we first came in there all the seats were taken except the table that we sat down at, is that true?

A. No, it is not. Two of the booths were occupied and several were unoccupied. I think most of the bar seats were filled.

Q. It is a small place, the entire bar is smaller than this courtroom, is it not? A. Yes.

Q. Indicating a room approximately 40 feet long and approximately 18 to 20 feet wide?

A. Yes. When we first sat down there were one or two empty booths in addition to the one we took.

Q. When we sat down they were all filled, isn't that true?

A. No, there were still one or two empty booths, including the largest booth which would seat more than the one we sat in.

Q. There was a juke box in the place, was there not? A. Yes.

Q. And a lot of drunks at the bar shouting and talking and slapping each other on the back?

A. I don't know whether they were drunks or if they were shouting and slapping each other on the back. I observed no [768] such.

Q. Anyway——

(Testimony of John Despol.)

Mr. Tyre: Just a minute. Let the witness finish the answer.

A. I didn't observe anyone slapping each other on the back.

Q. (By Mr. Collins): There were a number of good looking girls in there that were talking loud and vociferously laughing and meeting and talking to the various drunks in the place, were there not?

A. I don't know. I didn't observe any such actions.

Q. And waitresses walking around and rattling their dishes and glasses and making change and otherwise interrupting various conversations?

A. The only time our conversation was interrupted or any glasses rattled was when she picked up the glasses at our table, when our glasses were changed and when I stuck to my milk.

Q. You were sober and I and Conway proceeded to get ourselves tinkled, is that correct?

A. No, that is not correct.

Q. How many drinks did I have?

A. I would say you had three or four and Conway had three or four.

Q. And I drink doubles, do I not, Scotch and water?

A. Yes, I know on occasions you drink doubles.

Q. Is it your testimony that when we came into this place that this place was very quiet and that my conversation was audible all over the room?

A. No, toward the latter half of our session

(Testimony of John Despol.)

there the juke box was playing at intervals, but not during the first session.

Q. Did you have any witnesses attending our first meeting at Carl's?

A. Not to my knowledge.

Q. Well, let's see, now. We came into this place and we sat down, the table had been arranged for the victim to walk in and set down at.

Mr. Tyre: I object to that as obviously improper.

Trial Examiner Kent: This is cross-examination.

Q. (By Mr. Collins): The fly walked into the spider's net at the appropriate place. That is true, *isn't*?

Mr. Tyre: I object to that. That is improper cross-examination.

Q. (By Mr. Collins): You were really trying to entrap me into making some indiscreet statements, were you not?

Mr. Tyre: I object to that statement too.

Trial Examiner Kent: This is cross-examination. The answer may be taken.

A. I had requested——

Q. (By Mr. Collins): Just answer my question now. [770]

Mr. Tyre: I think the question can't be answered by yes or no, your Honor.

Mr. Collins: I didn't ask for a yes or no, Mr. Tyre. I am just attempting to have him answer my question.

Trial Examiner Kent: I have previously occa-

(Testimony of John Despol.)

sionally instructed witnesses that they should always attempt to answer questions briefly and concisely, that if in fairness a very brief concise answer does not seem to be a complete answer, the witness is always entitled to amplify. I have also instructed the witnesses that that does not mean that he should amplify every answer.

Mr. Collins: I will reframe the question since there have been a number of objections.

Q. (By Mr. Collins): You and Jerry knew that I was coming there at a certain time, because you made the appointment? A. Yes. [771]

Q. And Jerry arranged to have witnesses seated around, isn't that true?

A. I arranged that.

Q. You arranged that; and the purpose of this was to trap me into making some indiscreet statements that you might testify to in court, was it not?

A. The purpose of it was to have witnesses to whatever conversation took place.

Q. You knew what the conversation was going to be, having had a previous conversation with me, did you not?

A. Well, I knew what the previous conversation was. I didn't know whether or not you were going to repeat your conversation or whether you were going to make some other proposal or discuss something else. I had no way of knowing definitely and precisely what you were going to say. That is, I am not psychic.

(Testimony of John Despol.)

Q. You knew what the conversation was at the first meeting? A. That is correct.

Q. And I believe you testified that you were going to think that proposition over?

A. That is correct.

Q. And so, if you had decided—had you or had you not decided to refuse my proposition before you decided on this second meeting?

A. After I had left you at the first meeting at Carl's Bar, I had decided to reject it. [772]

Q. So that then your purpose was——

A. After I had left it.

Q. So that then your purpose in getting me down to Carl's on the second occasion was to entrap me into some form of indiscreet statement, is that not true?

A. Well, we only wished to have witnesses at any future meetings with you on the subject of our relations at O'Keefe & Merritt.

Q. Now, Johnny, since this hearing has been going on I have had a few drinks with you. Have you had witnesses at those meetings other than those that were present at our table?

A. I have not had the opportunity to arrange that.

Q. We had a drink last night after court, didn't we?

A. Yes. Mr. Nethington and Mr. Conway were with me last night, and no conversation took place in respect to this case of any significance. We con-

(Testimony of John Despol.)

fined ourselves to the girl that was getting cigarettes, as you recall.

Q. Well, I am learning to be careful around you. You didn't ask any of the employees of the O'Keefe & Merritt Company to come down and listen to these conversations, did you? A. No, I didn't.

Q. When you accepted my invitation to have a drink with me last Friday, were you considering leading me into some damaging statements then, or did you consider that you had your case well enough established by that time? [773]

Mr. Tyre: May I have that question read?

Mr. Collins: I will withdraw the question.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. Despol, we have had drinks together—I would just like to get this question straightened out—we have had drinks together and we have discussed many things of a personal nature, have we not?

A. Yes, we have discussed the philosophy of life, I guess, as well as personal remarks at one time or another.

Q. When we were having those personal discussions, it was not your theory that I was going to tell anybody that you were concerned with the nature of our conversation, was it? A. How is that?

Q. You didn't think, it was not your theory that I was going to tell any of those conversations, was it?

(Testimony of John Despol.)

A. I didn't know—I don't know that the thought entered my mind in one way or the other.

Mr. Collins: That is all.

The Witness: Maybe you have. I don't know.

Mr. Collins: Well, I have not.

Trial Examiner Kent: Yes. Mr. Garrett.

Q. (By Mr. Garrett): Mr. Despol, when you first met Mr. Collins in 1939 or 1940, do you remember what occasioned that meeting? [774]

A. Yes, sir. We were negotiating a contract for the Pacific Cast Iron Pipe & Fitting Company. He was counsel or representative for that company, and I was representative for the United Steelworkers of America.

Q. Is that the Pacific Iron Fitting Company, or Pipe and Fitting Company?

A. Pipe and Fitting Company.

Q. On the occasion of your first meeting with Mr. Collins, did O'Keefe & Merritt enter into your conversations at all?

A. It has been so many years ago I don't recall. I don't think so.

Q. At that time were the United Steelworkers conducting any activities with respect to O'Keefe & Merritt?

A. Not at that particular time. We had conducted activities in 1940 and 1941, but not to any great amount.

Q. This meeting on Pacific Cast Iron Pipe & Fitting Company was before or after the C.I.O. activities at O'Keefe & Merritt?

(Testimony of John Despol.)

A. I would say it was before.

Q. At the time of your first meeting with Mr. Collins on the Pacific Cast Iron Pipe & Fitting Company contract, did you know that he had any connection with O'Keefe & Merritt?

A. I think I had some vague understanding that his offices were located in that building, the best I can recollect.

Q. At that time was the A. F. of L. picket line still on at [775] O'Keefe & Merritt, or had it been removed by then?

A. I don't think there was any picket line at that particular time, to the best of my knowledge.

Q. You knew, of course, at that time, however, that the dispute between the A. F. of L. and O'Keefe & Merritt had not yet been resolved or terminated?

A. No. I had known that there had been a strike at O'Keefe & Merritt, because one of our representatives, Mr. Anaya, formerly had worked at that plant and had walked out on a strike at that time. 1936.

Q. Was it 1936 or later?

A. I think it was 1936, possibly '37. '36.

Q. Were you in the C.I.O. in 1936?

A. Yes. I was in the—a member of the Steelworkers Organizing Committee, which was set up between the Amalgamated Iron, Steel & Tin Workers of North America and the Committee for Industrial Organization, which had been constituted by

(Testimony of John Despol.)

eight A. F. of L. unions that eventually evolved into what is now known as the Congress of Industrial Organizations, C.I.O.

Q. That was the Steelworkers Organizing Committee?

A. That is correct. It is now known as the United Steelworkers of America.

Q. In connection with the A. F. of L. strike at O'Keefe & Merritt, did you know at the time of the C.I.O. activities [776] there in 1940 and 1941 that the A. F. of L. dispute with O'Keefe & Merritt still existed at that time?

A. No, I did not know that.

Q. What was your information in that respect?

A. The only information I had was that there had been a strike which had been lost by the A. F. of L., and that was the end of it, as far as I knew.

Q. What did you know about the status of the company with respect to the A. F. of L. unfair list, if anything, at that time?

A. Nothing at that time.

Q. Nothing at that time? Did you have occasion from time to time to see the weekly publication of the local A. F. of L. Central Labor Council and other councils, known as the Los Angeles Citizen?

A. No, I do not see that paper regularly. I have seen it on rare occasions when some associate in the A. F. of L. has given me a copy, is about the only time I have seen that paper.

Q. When first after the A. F. of L. strike which

(Testimony of John Despol.)

you place in 1936 and some of the other evidence in this case has placed as late as 1939——

A. At the beginning of the strike?

Q. No, I want to make it clear that with respect to the exact time of that strike, the evidence here varies. [777]

A. I understand that. I may be off a couple of years.

Q. Yes. And your recollection is that——

A. 1936 to 1938 would be my understanding when the beginning was.

Q. Whatever it was, that two-year period, we will call it the period of the strike or the picketing, Mr. Despol, when first after the end of that period of cessation of picketing at O'Keefe & Merritt did you learn, if you ever did learn, that the company was still on the A. F. of L. unfair list?

A. During the election campaign for the National Labor Relations Board election.

Q. When would you place that, about?

A. That was in the fall of 1945.

Q. These C.I.O. organizing activities in 1939 and 1940 which you previously referred to on my examination here——

A. I would say it was 1940, probably, there was some literature distribution.

Q. But you did not learn about the unfair list until the fall of 1945?

A. As far as I personally am concerned, no. What Mr. Anaya, who conducted the campaign in

(Testimony of John Despol.)

1939 and 1940, what his knowledge was, I don't know.

Q. I am getting back to the first organization, which you now place in 1940. A. Yes. [778]

Q. Was that under your supervision, Mr. Despol?

A. Well, all organization has been more or less under my general supervision, but I would say in that particular one it was 1940.

Q. How long a period does that cover?

A. There were literature distributions running over a period of a few months and on various occasions. It was not a concentrated campaign, in the normal sense of that term.

Q. Do you know when the distribution of literature began, and you know when it terminated, and it occupied several months during 1940, is that correct? A. To the best of my recollection.

Q. But during that period you did not become aware that the company was on the A. F. of L. unfair list, is that correct? A. That is correct.

Q. Was it during that period that you again met Mr. Collins or the next time after the time you negotiated the Pacific Cast Iron Pipe & Fitting Company contract with him in 1939 for 1940, or did you after the contract negotiations meet Collins on other occasions prior to the time you started your literature distribution in 1940?

A. The first time that I can recall meeting Mr. Collins after meeting him in connection with the Pacific Cast Iron Pipe & Fitting Company negotia-

(Testimony of John Despol.)

tions was at the Voight Rubber case before the Regional War Labor Board. If I ran into him around town before that, I don't recall the particular meeting.

Q. Did he represent some litigant in that case?

A. In which case?

Q. In the rubber case before the War Labor Board?

A. He represented the Voight Rubber Company.

Q. Were you there in some official capacity?

A. I was the labor member of the panel of the Regional War Labor Board.

Q. That is the occasion you previously referred to on your cross-examination by Mr. Collins, where you had seen him back there some time?

A. Yes. That was in 1945, I believe.

Q. It was not that late, was it?

A. It was the winter of 1944-45. I think it was the first part of the year 1945. Mr. Collins may remember that better than I. Ask him the question.

Q. Then I take it that during the literature distribution activities which you place in 1940—during the course of those activities did you meet Mr. Collins?

A. That is correct. We were trying to organize the men.

Q. And I take it from what you say that you did not have occasion to, during those activities, to meet anyone connected with management?

A. That is correct, unless they went through

(Testimony of John Despol.)

with the workers [780] and took our literature. If they were management people I didn't know it.

Q. You did not go in and talk to management?

A. No.

Q. Did you at that time know that Collins represented O'Keefe & Merritt?

A. I knew he had offices there. As to what his particular capacity was, it had never been spelled out for me.

Trial Examiner Kent: The record may show that the witness asked the Trial Examiner if we were going to recess at 12:00.

The Witness: Promptly.

Trial Examiner Kent: I told him yes.

Q. (By Mr. Garrett): During the course of the Voight Rubber Company War Labor Board case, either in the offices of the Board or elsewhere when you met with Mr. Collins, did you have any conversations with him relative to the labor situation at O'Keefe & Merritt?

The Witness: May the reporter read that?

(The question was read.)

The Witness: No, I did not.

Q. (By Mr. Garrett): Now, after that Voight Rubber War Labor Board case, when is the next time you talked to Mr. Collins or anyone representing management, concerning the labor situation at the O'Keefe & Merritt Company? [781]

A. The time I called him on the phone, that I have testified to, the first phone call I had with Mr. Collins.

(Testimony of John Despol.)

Q. And that, I think, you testified previously, was some time shortly after October 23, 1945; is that correct? A. Thereabouts.

Q. That was during the course of your organizing campaign at the plant; is that correct?

A. That is correct.

Q. Now, then, at the close of the Voight Lumber War Labor Board case——

A. Voight Rubber, not lumber.

Q. I take it then, up to the time of this phone call, shortly after October 23, 1945, from that time back to the close of the Voight Rubber case, you hadn't talked to Mr. Collins at all?

A. I would say that is correct.

Q. Or to anyone during that period connected with management regarding the labor situation at O'Keefe & Merritt?

A. I talked with management in respect to O'Keefe & Merritt in the winter of 1943-44, when I made arrangements to have literature distributed at the plant, inasmuch as the plant guards had attempted to prohibit me and my associates from distributing such literature. We arranged to be fingerprinted by the United States Army Signal Corps, so there would be no question about the national security, national [782] safety being involved; identifying who was it that was distributing literature for our union or contacting employees in the plant.

Q. Was that inside the plant or outside?

A. Was what inside the plant or outside?

(Testimony of John Despol.)

Q. Do you recall who you talked to at that time connected with management?

Mr. Nicoson: Counsel, the witness has asked you a question. He said, "Was what inside the plant or outside?"

Mr. Garrett: I am sorry.

Trial Examiner Kent: Yes.

Q. (By Mr. Garrett): You testified, in connection with getting straightened out on the distribution of this literature in the winter of 1943 or 1944, you talked to somebody connected with management?

A. I talked, I believe, with the Captain of the guards, or whoever was in charge of the plant safety protection.

Q. Anyone else?

A. No. I think that is the only one I talked to. The guards, themselves, if you call them management.

Q. Your only talks were with plant protection?

A. That is correct, to the best of my recollection.

Q. Did you have any other conversations with Mr. Collins up to the time of this phone call around October 23, 1945, that you haven't told us about?

A. Not to my recollection.

Q. Are there any other conversations up to the time of this phone call on or about October 23, 1945, that you haven't told us about with anyone connected with management at O'Keefe & Merritt?

A. Not to my recollection.

Q. Now, when you talked to Collins on the

(Testimony of John Despol.)

phone, shortly after October 23, 1945, for the first time in that period, I take it, that your organizing drive at O'Keefe & Merritt was already under way?

A. That is correct.

Q. How long had it been under way?

A. I would say approximately a month.

Q. But during that time you hadn't had occasion to negotiate with management for any reason?

A. Yes, I think there was the question raised there again about literature distribution.

Q. Well, I am not going——

A. In which I had gone——

Q. I am not going to ask——

A. You asked the question.

Q. That is all right. I just want you to know that unless you want to make a statement, which you are perfectly privileged to do, I am not interested particularly myself in conversations with plant protection. [784]

A. This had to do with literature distribution in which the management had written a letter to the United States Army Signal Corps requesting that the street be closed from everybody. The Army had confirmed that until I pointed out to them that what they were after was specifically excluding the union representatives from that street, and it was not the question of general public transportation going through the street.

The Army gave us then permission to go into the street, but kept it closed to the general traffic transportation, being a public street.

(Testimony of John Despol.)

Q. In other words, about the same kind of situation you were confronted with back in 1943, the latter part of 1943; is that right?

A. It was a bit less difficult, in that we didn't have to be fingerprinted.

Q. During the month your drive had been going on, before you had this first talk with Collins on the phone shortly after October 23, 1945, you hadn't had occasions to talk with anyone representing management, except those persons who were in plant protection; is that right? [785]

A. Not to my recollection, unless somebody said hello to me at the plant gate.

Q. Did any of your subordinates have any negotiations during that period of one month, to your knowledge?

A. No negotiations to my knowledge.

Q. Now, at the time of this conversation with Collins shortly after October 23, 1945, had you heard anything about the A.F.L. unfair list in connection with the company, from anyone?

A. Shortly after what?

Q. I think the question will be clearer if we have the stenographer read it.

(The question was read.)

The Witness: The first time that we became aware of that question as an issue was a couple of weeks just prior to our conference up here at the Board, when some of the men in the plant raised that as an issue.

(Testimony of John Despol.)

Q. (By Mr. Garrett): Did you make any inquiries about it after the question was brought up at that time?

A. I, at one time, sought to contact Mr. Mashburn of the Building Trades Council of the A.F.L. I was unable to reach him.

Q. Any other inquiry?

A. I think I repeated that just prior to the election. And shortly after the election I again made an effort to contact [786] Mr. Mashburn. In fact, I saw him over at the Biltmore Hotel when he and I were on a meeting on another matter. At that time we briefly discussed the situation.

Q. Was that before or after the National Labor Relations Board election?

A. That was after the N.L.R.B. election, when I saw Mr. Mashburn.

Q. So up to the time of the N.L.R.B. election you hadn't found out anything about the status of the company on the A.F.L. unfair list, except what was told you either by employees of or management of the company; is that correct?

A. Or by one of the A.F.L. representatives down at the gate during the election campaign. I think there was some conversation, I don't recall the particulars.

Q. After your conversation with Mr. Mashburn at the Biltmore, have you ever had any conversation since with anyone else connected with the A.F.L. or with Mr. Mashburn as to the status of

(Testimony of John Despol.)

the O'Keefe and Merritt Company with respect to the A.F.L. unfair list?

A. Well, I have had conversations with Mr. Lawrence of the Teamsters, Mr. Blaney of the Teamsters, Mr. Bassett—

Mr. Nicoson: Has Mr. Bassett been identified?

The Witness: Of the A.F.L. Central Labor Council. With the president of the Painters District Council.

Q. (By Mr. Garrett): Who is that? [787]

A. Tommy—Handford, is that—

Q. Brandford.

A. Brandford. With Mr. Roberts at the Teamsters' hall one night, of the Stove Mounters' Union.

Q. Anyone else?

A. And perhaps with various and sundry business agents that appeared at O'Keefe and Merritt plant during those morning morale building demonstrations that were staged by our organization.

Q. I notice you say you talked about it with Lawrence of the Teamsters and Blaney of the Teamsters and Bassett of the A.F.L. Central Labor Council. Was that at the N.L.R.B. conference or at some subsequent time?

A. That was subsequent to the N.L.R.B. conference.

Q. Were all these conversations concerning the status of the company on the A.F.L. unfair list with the men that you have mentioned subsequent to the N.L.R.B. conference?

A. I may have discussed it with some of the

(Testimony of John Despol.)

A.F.L. representatives at the gate prior to the N.L.R.B. conference; that is possible.

Q. I mean exclusive of conversations at the gate, were all these conversations with the names you have just mentioned in your answer to the previous question?

A. They were subsequent.

Q. Subsequent? [788]

A. Yes.

Q. To the N.L.R.B. conference?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Were they all subsequent to the election, with the exception of what conversations you might have had at the gate?

A. I would say that is correct.

Mr. Garrett: I notice it is now 12:00 o'clock.

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: In the off the record discussion here I have explained to the Trial Examiner I am not feeling well. I may not be able to come back this afternoon to the afternoon session.

In the event that no other witnesses are produced, except Mr. Despol, who is now on the stand, I won't insist on my right to being excused. In the event there are any new witnesses called, then I will ask the Trial Examiner, in the event I am unable to return this afternoon, to adjourn the meeting when you finish the cross and redirect of Mr. Despol.

It may be we can work out some sort of a stipula-

tion as to the testimony as to these various witnesses, as to what these [789] various witnesses are alleged to have heard, relating to the conversations Mr. Despol has been discussing. I won't be here to enter into the stipulation. It will depend on the further testimony of Mr. Despol, as to whether the other counsel here can agree to it.

In view of the situation, I would like to ask the court's permission to absent myself from the hearing, if necessary, and not go into any other matters than those I have already indicated. [790]

Mr. Nicoson: I don't have any serious objection to that, except, as I told you yesterday, I am put a little hard on the matter of time with respect to Mr. Conway. If we can arrive at a stipulation concerning him, why, I will be very happy to, and I think perhaps it will perhaps obviate the necessity of putting Mr. Conway on the stand at all and will accommodate us all as to time.

Of course, Mr. Despol is still on the stand, and I have no idea of how long his examination will take. I am informed by counsel that further cross might be rather lengthy and will probably take the rest of the afternoon. If it were not for the press of time I would gladly join with counsel. While I am not at this time stating if he is absent that I will put on another witness or even insist on it—I think in fairness to him I wouldn't insist on it—as to the matter of putting any other witness on, except Mr. Despol, I think I can give him that assurance at this time.

Mr. Collins: Mr. Nicoson, in the event you don't ask any more direct questions of Mr. Despol—in other words, if we were to finish with Mr. Despol's testimony I would be willing to stipulate Mr. Conway, if he were asked the same questions as to meetings he attended, his answers, both on direct and cross-examination, would be the same. Then I don't know what you are going to bring out this afternoon.

Mr. Nicoson: I will have to ask Mr. Despol a few [791] questions on redirect. I don't want to foreclose myself that opportunity. Otherwise, I would be glad to enter into the stipulation at this time.

Trial Examiner Kent: That is Mr. Despol on direct?

Mr. Nicoson: That is right.

Mr. Collins: I would be willing to stipulate to this, Mr. Nicoson: That as to the testimony of Mr. Despol, up to this point, I will stipulate that Conway's will be the same as to the meetings he attended. He didn't attend the first meeting in the cocktail bar and he didn't attend some of the meetings at my office. I will be willing to stipulate his testimony, as to the meetings he attended, will be the same as Despol's up to this point.

Mr. Nicoson: I would like to do that. However, I have no way of knowing what is going to be brought out this afternoon.

Mr. Schullman: I think the thing to do is to stipulate tomorrow when you appear and find out what has developed.

Mr. Collins: I think that is the best thing.

Trial Examiner Kent: You haven't any objection then to our proceeding with Mr. Despol this afternoon?

Mr. Collins: No.

Trial Examiner Kent: We will adjourn until two o'clock.

(Whereupon, at 12:15 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [792]

After Recess

(The hearing was reconvened at 2:15 o'clock p.m.)

Trial Examiner Kent: On the record.

Mr. Schullman: I wish to state merely, on behalf of Local 792, for all the reasons heretofore set forth that I object to the introduction in evidence of Respondent's Exhibit No. 3, insofar as it is applicable or is attempted to be applicable to Local 792.

Trial Examiner Kent: The record may so show.

JOHN DESPOL,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Cross-Examination

(Continued)

Q. (By Mr. Garrett): Now, turning for a moment, Mr. Despol, to any conversations that you may have had prior to the N.L.R.B. conference with representatives of the A.F.L. at the gate, do

(Testimony of John Despol.)

you have any clearer recollection at this time of any such conferences or conversations at or near the gate with A.F.L. representatives prior to the N.L.R.B. election?

A. Not of any particular one conversation, no.

Q. Can you recall any particular person or any particular conversation or the substance either of the person's identity or the conversation with sufficient clarity so [793] you would feel justified in giving it here?

A. No, I don't. I recall one time Mr. McMurray, I believe, for the Machinists, was passing out literature; I remember his presence there. I don't recall any particular incident.

Q. (By Mr. Garrett): Do you remember yesterday we put in that memorandum, Mr. Despol, by Mrs. Phoenix of the general conference at the Board concerning the election? Do you recall any other conferences other than that when you were present at the Board here in which the question of the labor situation at O'Keefe and Merritt was discussed?

A. I think that was the only Board conference that took place.

Q. In connection with that particular election that took place in November, 1945, you were only up here at the Board once, is that correct?

A. No, I was up at the Board signing the papers, but so far as the conference is concerned with any of the parties, it was just that one time.

(Testimony of John Despol.)

Q. On the occasion when you were up and signed the papers, was that the R petition?

A. The R petition, yes.

Q. Signing those, but there was no one here at the time you did that representing the A. F. of L. unions or the Company, I suppose, is that right?

A. At the time we signed the R petition? [794]

Q. Yes.

A. That is right. There was no one else present.

Q. There were no other conferences you personally attended at the Board in connection with the matters which were to be disposed of in that N.L.R.B. election in November, 1945?

A. I don't recall any.

Q. Did you sign the R petition, Mr. Despol, for the investigation of representatives which resulted in proceedings before the Board in this region in April of 1944?

A. Did I sign it in April of 1944?

Q. That is right, did you sign the R petition?

A. I don't believe so.

Q. Are you familiar with the fact that there were such proceedings along about April 1944?

A. I am familiar that there were proceedings.

Q. Was that on petition of the C.I.O.?

A. On petition of United Steel Workers of America.

Q. I do not have the file of those proceedings, but excerpts from the hearing have been included in the evidence here in the form of a rejected exhibit. Were you present at that hearing?

(Testimony of John Despol.)

A. For eight months of 1944 I was in Washington, D. C., and therefore was not—including the time when this hearing took place. I was not present.

Q. You are not a very good man to question about that [795] particular R petition then, I don't suppose. Who of your assistants would be more familiar with it? A. Mr. Anaya.

Q. Was the O'Keefe and Merritt Company named as the respondent in those representation proceedings in the early part of 1944?

Mr. Nicoson: I will stipulate that they were named as the Company, but not as the respondent. We do not refer to corporations as respondents in R cases.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Those were proceedings involving the O'Keefe and Merritt Company, is that correct? A. That is correct.

Q. Your organization, the United Steel Workers, represented to the Board at that time that there was a matter of representation to be determined by the Board involving the O'Keefe and Merritt Company, is that correct? A. That is correct.

Mr. Tyre: I don't mind the answer going in, but I think any further questions of this witness as to that petition and what the proceedings were at that time are not proper, because this witness is not the proper witness to make those answers. He was not here, he has already testified, and there-

(Testimony of John Despol.)

fore anything that he would say would be a conclusion. [796]

Trial Examiner Kent: Purely hearsay I think.

Mr. Garrett: It may be hearsay but—I beg your pardon, Mr. Tyre.

Mr. Tyre: I think the witness has already named the person that would be best qualified to answer those questions, and in order to save time we ought to call that witness and not ask this particular witness those objectionable questions.

Mr. Garrett: Do you have him present, Mr. Tyre, Mr. Anaya?

Mr. Tyre: He can be.

Mr. Garrett: It occurred to me no particular harm might be done if we saved a little time by asking Mr. Despol just what is the responsible head of the organization. He knows about those proceedings. Mr. Despol will understand. If it is a matter with which he is not reasonably conversant he can say, "I don't know. You will have to ask Mr. Anaya."

Q. (By Mr. Garrett): Do you understand that, Mr. Despol? A. I do.

Q. Do you know enough about the thing from being the responsible head of the organization to be able to tell me whether in those proceedings the organization, which you head, described an appropriate unit in their petition to the Board? [797]

Mr. Nicoson: I will stipulate they did. All petitions describe an appropriate unit. That one was no different.

(Testimony of John Despol.)

Q. (By Mr. Garrett): Do you know that your petition described the unit? A. Yes.

Q. Are you familiar enough with the form of the petition to know that in such petitions the petitioner is required to set forth the identity of any other labor organizations which may be interested in the representation question? Do you know that?

A. Yes.

Q. Are you able to tell me, of your own knowledge, what unit your organization petitioned for in that proceeding?

A. I believe it was for the same unit as our petition was acted upon in '45, namely, the production and maintenance unit.

Q. Were the exclusions about the same, if you recall?

A. To my knowledge they were about the same.

Q. If you saw that petition would it refresh your memory? A. Undoubtedly.

Mr. Garrett: I will ask that the petition which, I believe, is in court, be shown to the witness to refresh his memory. I don't want to see it myself.

Mr. Nicoson: I am sorry, I don't have it in court. I can obtain it. I don't have it with me now. I will be glad [798] to get it.

Mr. Garrett: All right. If it can be sent for possibly we can come back to that later.

Q. (By Mr. Garrett): Were you away from your office here at the time that petition was filed, Mr. Despol?

(Testimony of John Despol.)

A. I don't recall when the petition was filed, so I can't answer the question.

Q. Well, maybe you can tell us during what months in 1944 you were absent from this area and in Washington?

A. From February 1944 to October 1944, except for occasional visits I made back across country on matters that required my attention here.

Q. So that by the time you got back that matter was all concluded; is that right?

A. Well, I believe that it was still in process at one time I returned here on a weekend. I don't particularly recall, without seeing the date and time of these hearings.

Q. When you had the proceedings and conference in 1945 about your petition, which resulted in the election in November 1945, did you at the conference arrange for the Company to present any payrolls?

A. In '45?

Q. That is right. I am referring now to that conference set forth in Mrs. Phoenix's notes?

A. No, I believe that was the Board's function, not mine. [799]

Mr. Nicoson: I will stipulate it was, and that Mrs. Phoenix arranged for the payroll to be submitted.

Q. (By Mr. Garrett): Now, at that time, Mr. Despol, you knew, did you not, that there was another operation going on in the premises occupied by the O'Keefe and Merritt Company besides that operated by O'Keefe and Merritt.

No. 11919

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Circuit Court of Appeals
For the Ninth Circuit.**

**NATIONAL LABOR RELATIONS BOARD,
Petitioner**

vs.

**O'KEEFE AND MERRITT MANUFACTURING
COMPANY, etc.,**

Appellees.

**UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., and
PHILIP MURRAY, Individually and as
President of the United Steelworkers of
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(Testimony of John Despol.)

A. I did not know the Pioneer Electric operation was still continuing into effect; in fact, so far as I knew—I knew at that time it was obsolete and no longer operative in the plant. I did know that during the previous hearing in 1944 that Mr. Anaya stated to me that the payroll of the Pioneer Electric had been run into the O'Keefe and Merritt hearing. What proof there is to that, I don't know, not being there.

Q. I don't know either, but what did you understand him to mean by the words "run into the hearing"? Did you get any further information?

A. That it had been made part of the case.

Q. You took that to mean that Mr. Anaya at that time had full knowledge that there was a Pioneer Electric Company operating there?

A. Mr. Anaya apparently was not aware of the Pioneer Electric operation, nor that the payroll of the Pioneer Electric had been submitted as part of the Moulders' eligibility list, which resulted in our inability to secure an election, other than that time it had been restricted to O'Keefe and Merritt payroll list at that time. It is my understanding we had the required percentage to secure the election.

Q. There was no election as a result of that hearing in April, 1944?

A. Not at that time.

Q. I think it is a fair statement, is it not, to say that as a result of what Mr. Anaya told you, you knew, after he conveyed the information to you, that there were two separate payrolls involved in

(Testimony of John Despol.)

the general area covered by what you knew as the O'Keefe and Merritt operation?

A. As a war time operation, yes.

Q. Did you know or learn anything further about the Pioneer Electric, that is, as to what it was making or whether it was a corporation or partnership or anything else about it that seemed relevant to you?

A. No, I did not, except that when I discussed organizational [801] problems with the employees at the plant, that there was no mention by them of any production operation of Pioneer Electric.

Q. And when was that?

A. In the fall of 1945.

Q. Mr. Spallino has spoken about these reports that were being made by him to Louie Ortega. Did you receive from Ortega or others any of that information that was so being reported?

A. What information are you referring to?

Q. I mean the information that was being reported by Mr. Spallino to Mr. Louie Ortega.

Mr. Tyre: I will object to that question on the ground that it calls for hearsay. The question apparently requires Mr. Despol to know what information was conveyed from Mr. Spallino to Mr. Ortega, and I think that is beyond the province of this witness.

Trial Examiner Kent: I think unless the witness was here and heard Spallino's testimony, he probably would not know just exactly what counsel is referring to.

(Testimony of John Despol.)

The Witness: I was here during part of it, but not all of it.

Mr. Tyre: I think he would also have to know what particular information counsel is now referring to.

Mr. Garrett: All right. [802]

Q. (By Mr. Garrett): You were getting reports about conditions inside the plant in the fall of 1945, which enabled you to conclude that the Pioneer Electric operation was dormant, let us say? Would that be a fair statement?

A. My reports indicated that Pioneer Electric was not even an issue at the plant.

Q. Not even an issue. What do you mean by saying it is not even an issue, Mr. Despol?

A. That the corporation as such was not operating the plant, to the best of my knowledge.

Q. The information you got was that—well, let's correct that a little bit, Mr. Despol. I think that we can rely upon the statements of Mr. Collins to the extent of conceding that the Pioneer Electric Company was a co-partnership rather than a corporation.

A. A co-partnership.

Q. You mentioned it as a corporation. I notice that your attorney has a photostatic copy of the articles of co-partnership, and I think that he will probably agree.

Now, as to the co-partnership, which was doing business under the Pioneer Electric Company, you

(Testimony of John Despol.)

concluded in the fall of 1945 that it was not even in operation, is that correct?

A. Or that they had no employees at the plant that we were organizing.

Q. Well, which? [803] A. Both.

Q. Did you conclude that they were not in operation or that they had no employees?

A. That they were not in operation and had no employees at the plant that we were organizing.

Q. Did you further conclude on the basis of information that you received that they had no employees in the plant, irrespective of whether or not you were organizing them?

A. I didn't even think about that question. I was only thinking about the employees who were coming under the jurisdiction of the United Steelworkers and who were organizable.

Q. It would not be that you had inadvertently forgotten about the Pioneer Electric Company.

A. No, we very definitely considered that, and if you are referring to the sales force, I didn't even consider the question of the sales force, if that is what you wanted.

Q. I am not referring to the sales force. You are starting in to cross-examine me now, Mr. Despol. I am definitely not talking about the sales force. I am talking about the production and maintenance employees.

A. I concluded they had no such production or maintenance employees in the plant.

Q. Irrespective of whether they were the ob-

(Testimony of John Despol.)

jectives of your affections in the matter of organization or not, you concluded there just weren't any, is that correct? [804]

A. That is correct.

Q. On the basis of what information did you reach that conclusion?

A. On the basis that we were not able to discover any employees of Pioneer Electric at the plant.

Q. That is right, you were not able to discover them. Now, what did you discover?

A. Everyone that we talked to was an employee of O'Keefe and Merritt.

Q. The ones you talked to were O'Keefe and Merritt?

A. As far as we could determine.

Q. Was it solely on that basis that you came to the conclusion that there were no other employees there but O'Keefe and Merritt employees, just because the ones you talked to happened to be O'Keefe and Merritt employees?

A. In the absence of any evidence or any information that Pioneer Electric was still an operating concern, I concluded that it was a war time operation and had gone out of existence along about V-J Day or prior thereto.

Q. That was the conclusion that you operated under?

A. That is correct.

Q. Now, assuming that conclusion to have been incorrect, did anybody connected with the A. F. of L. make any representations to you which led you to reach that conclusion?

(Testimony of John Despol.)

A. I don't even think that I ever discussed Pioneer Electric [805] with the A. F. of L. prior to January 1st, or prior to the election, the National Labor Relations Board election that is.

Q. Now going a little further, did any of the persons you talked to who were connected with or who were supporting the C.I.O. in the plant make any representations to you as to whether there were or were not present other employees of the Pioneer Electric Company.

A. The only conversations that I had with employees were in respect to the Pioneer Electric payroll in that case that occurred during war time, 1944, and that is all.

Q. You had known that along about that time, in 1944, there was a sufficient number of Pioneer Electric employees down there to seriously affect the question of whether or not there would be an election, is that correct?

A. We didn't know at the time of the hearing, but we discovered it sometime thereafter. As to when, Mr. Anaya would know that better than I.

Q. Well, Mr. Anaya told you and after the evidence was all in, you knew then that there had been quite a lot of Pioneer Electric employees there at the time you had the R hearing in April, is that right?

A. I knew that when I returned from Washington, D. C. and we considered the question of organizing O'Keefe and Merritt.

(Testimony of John Despol.)

Q. And, as a matter of fact, I think just a moment ago you [806] blamed the presence of that number of Pioneer Electric employees for your failure to get an election in 1944, is that a fair statement?

A. I said it affected the determination as to the percentage of employees that we represented, in terms of the one payroll or the combined payrolls of Pioneer Electric and O'Keefe and Merritt.

Q. Well, of course, one employee would affect the percentage, so that is not what I wanted you to tell me. It is a fact, is it not, that after you got back from the east and found out what had happened to Mr. Anaya in this R proceeding in 1944, that you came to the conclusion that the quantity of Pioneer Electric employees there had been sufficient to exert a decisive effect on the question of whether or not the C.I.O. obtained the election?

A. Mr. Anaya did not tell me that it was decisive. He said it adversely affected our presentation of representation. As to whether it was decisive, I would not know, because I have not seen the facts or figures on either factor.

Q. Did he tell you the extent to which he believed it adversely affected your 1944 petition?

A. No, he did not.

Q. Did he blame his failure in that case upon the effect of the Pioneer Electric payroll?

A. No, I think it was primarily our inability to secure a [807] sufficient number of O'Keefe and

(Testimony of John Despol.)

Merritt payrollers to compensate for any additional payrollers from the Pioneer Electric payroll.

Q. I see. So he was not that unusual type of employee who take the entire blame upon himself, but he did represent to you that the failure——

A. Well, he placed the particular blame on the fear among the employees in the plant about signing a union card. That is where he placed the blame.

Q. Well, I would expect him to report that to you, but now I am going to try to get back again to the question of the effect of the Pioneer Electric payroll. It is a matter of fact, that you found after you got back that he had gone into the 1944 proceedings without having any representation there on that payroll, did you not?

A. I don't know.

Mr. Tyre: Just one minute. Mr. Examiner, I think it has been clearly shown now by the answers this witness has had to give to these questions that he does not know the answers. When we have him tell what he knows and what he surmises by what was told to him by somebody else who was right on the job, I think we are wasting a lot of time, Mr. Examiner, by continuing this line of examination of this particular witness.

Trial Examiner Kent: I think so. I think this ought [808] to be put in by the best information which is possible.

Mr. Schullman: May I support the position? I think it is very important, for this reason: Under

(Testimony of John Despol.)

the present certification—I do think, your Honor, that the testimony is material and relevant.

Trial Examiner Kent: It may be for some purposes, but it would be entitled to much more consideration if given by a witness who knew the circumstances.

Mr. Schullman: This witness has already testified he can only tell what he knows. If he doesn't know, he can refer to this other witness. I don't think he should be limited as to matters he knows.

Mr. Garrett: I would like to discontinue this line of questioning at the moment, although I understand I am not entirely precluded from continuing at some later point in the cross-examination.

Trial Examiner Kent: You may.

Q. (By Mr. Garrett): Have you seen this tract that has been marked Respondent's Exhibit 3, a mimeographed sheet consisting of one page?

A. Yes.

Q. I don't know whether you wrote that or not. I don't know whether you are a literary man or just a man of action. Do you recall when you first saw it?

A. I think the first time I read it was when Mr. Collins [809] presented it to me yesterday.

Q. You didn't know about its issuance at the time it was issued sometime in February or March, 1946?

A. I know that bulletins have been issued at regular intervals by Mr. Coville of the local union. On occasions I have read some of them, and other times

(Testimony of John Despol.)

I haven't had the time to keep up with his literary activities, as you put it.

Q. You exercise the general supervision of those publications and try to keep familiar with their contents?

A. Well, I couldn't call it supervision. Mr. Coville is subject to the local union. I attempt to keep familiar with contents of all bulletins of the union or individuals connected with the union.

Q. That was a publication, I take it, of the local union, referring to Respondent's Exhibit 3?

A. Yes, by a representative of the local union.

Q. Put out by a representative of the local union; is that correct? A. That is correct.

Q. Who would be the responsible officer of the local union who was responsible for such publications?

A. Mr. Coville, the organizer for the local union.

Q. How do you spell his name?

A. C-o-v-i-l-l-e.

Q. Now, you will notice that Respondent's Exhibit 3, which [810] you have before you, in the paragraph which is bracketed in red refers to the institution of the Pioneer Electric Company as a scheme to escape income taxes.

Mr. Nicoson: I object to that as not being a correct statement of the document. [811]

Q. (By Mr. Garrett): Well, just read it to me, that bracketed part. I will withdraw the question. Read me that bracketed paragraph.

Mr. Nicoson: I object to that.

(Testimony of John Despol.)

Mr. Garrett: I will read it to him then, as you prefer. I will withdraw the question.

Q. (By Mr. Garrett): Now, this bracketed section reads:

“The purposes of the change in operation had nothing to do with your union activities. It has been done to avoid tax payments and to get higher prices from the O.P.A.”

That is a correct reading of the paragraph as it appears in Respondent's Exhibit 3; is it not?

A. Yes.

Q. Now, does that coincide with your opinion as to the reason for the operation of the Pioneer Electric Company?

Mr. Tyre: I object. It calls for a conclusion. That is one of the very issues before the Board to decide. I don't think this witness is a competent witness.

Trial Examiner Kent: Objection sustained.

Mr. Garrett: All right.

Q. (By Mr. Garrett): You knew at the time of the election that the Pioneer Electric Company had been in existence at least as early as the early part of 1944; did you not? A. Yes. [812]

Q. As a matter of fact, you learned at that time that the Pioneer Electric Company had been in existence since some time prior to 1944; did you not? A. Yes.

Q. Did you regard it as having been at that time a legitimate production operation or merely a scheme to escape taxes?

(Testimony of John Despol.)

Mr. Tyre: I object to that as it calls for the conclusion of the witness as to what he thought it was in 1944 or any time earlier than that.

Mr. Nicoson: I join in the objection.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): You knew, did you not, that the rate of taxes throughout the war on corporation incomes was very high?

Mr. Nicoson: Objected to as immaterial. Objected to as being beyond any qualifications as shown by the witness to know any such thing. I submit the best evidence of that is the Internal Revenue's records themselves.

Mr. Garrett: I am going to argue against that objection, if I may, if your Honor will hear me.

Trial Examiner Kent: Very well. What is it?

Mr. Garrett: In order to apprise the witness of the direction of my intentions I will say that it may become material to whoever reviews and makes the decision in this case to know why Mr. Despol, after the occurrence in 1944, [813] permitted the Pioneer Electric Company, in his organizational efforts and his petitions for representation to this Board in 1945—that is particularly true in view of the fact, as has been stated here, a number of times by both the Board's attorney and the Trial Examiner—the alter ego theory is suggested by the complaint itself.

I expect to show by this and other questions addressed to this witness that this witness has had

(Testimony of John Despol.)

for a matter of pretty nearly 10 years a very wide familiarity with all factors involving the production and fabrications of metals in this area.

I expect to show that this witness knows, because the thing has happened in many, many operations where he and his organization enjoy representation and representation rights, that many co-partnerships were filed during the past four or five years, and mainly after the beginning of our participation in the war, and engaged throughout that period and are engaging in legitimate production activities in connection with which they had legitimate payroll and legitimate payroll problems and legitimate labor relations problems, without being in any sense the alter egos of the original enterprise from which they, or in connection with which they were informed.

I think I will be able to elicit from this witness to show he has a wide knowledge of the circumstances relating [814] to the formation of such a partnership. In that connection I will mention the the necessity—sometimes a legal necessity—for the separation of contracts; a legal necessity for forming operations to do business in fields not covered in original articles of incorporation, as well as the tax situations arising out of the high income taxes and surtaxes, which adversely affected the corporate enterprises, as compared with co-partnerships, particularly in this state where we have community property, as your Honor probably will understand.

Now, if all these things are true and this witness

(Testimony of John Despol.)

knows this, which I think he does, I think it is legitimate for me to inquire into the causes and the basis which led him to ignore the admitted and known existence of this co-partnership enterprise, both in his organizational activities and his petitions directed to the Board.

The Witness: I never ignored it. I could never find it.

Mr. Garrett: In other words, putting it in plain language, on the one hand it may be material if he knew about that enterprise and merely inadvertently forgot. It is material if his responses show that he intentionally ignored it.

Mr. Nicoson: I restate my objection to the question as it is framed, and I submit all this argument he has given us just remotely touches the question and the objection which I [815] made.

I don't know whether he can prove all these things with the witness or not. I will meet him on those subjects if he attempts to do it, because, I submit, I will tell him frankly I think it is immaterial to this proceeding as to the broad general knowledge of this witness.

I don't think we can inquire into his entire scholastic background and all the contracts he has been in in the 10 years he has been in the labor movement, and the speeches he has made and the speeches he has heard and all the other things that have come into his knowledge in the period of 10 years; it certainly can't all be material to this case.

I have no objection to his going into matters here

(Testimony of John Despol.)

which, in some wise, touch upon the issues involved here, but I certainly do object to any broad examination such as has been indicated at this time. I also will reiterate that the statement Mr. Garrett has just made—and he asked to be heard before you ruled on the objection—is about as remote from the question that I objected to as it can possibly be.

I restate my objection. It is incompetent, irrelevant and it is beyond the comprehension of this witness. Further, the income tax records of the Internal Revenue are the best evidence as to this broad tax problem that he is trying to question this witness about. [816]

Trial Examiner Kent: I think I would be inclined to limit it to his knowledge, the co-existence of the two businesses. Generally, your argument followed through to its logical conclusion would seem to indicate that you expected to carry along the line that would call for his giving a lot of legal conclusions. I don't see how I can accept them from a lay witness. I think most of the matter you want to bring in will probably come in through the respondent's case when he shows, by witnesses who are familiar with the facts and can definitely testify, as to just what the financial set-up was, just what was done, just what was done in the shift of operations from one organization to the other.

This witness couldn't possibly know those things. He would be simply guessing at it. I think we would have a distorted record we couldn't base any sound findings on.

(Testimony of John Despol.)

I do think that matter is material, but I think it best come in through the respondent's witnesses who definitely know what the situation is.

Mr. Schullman: Except you have this added factor, that while it is true the respondents will establish the physical facts concerned in the two companies, from which this Trial Examiner and the Board will adduce the legal conclusions, yet if you have a history of procedure in 1944 election, in which the same union participated, to wit, the United Steelworkers, in which, for the failure to include the [817] payroll of Pioneer, apparently the petition was dismissed.

This witness, as the head of the United Steelworkers in this area, is visited with knowledge of a physical fact. I think it is pertinent to find out the basis for the motion.

The Witness: Except we could not find any employees of Pioneer Electric to sign up in the fall of 1945. If there had been any we would have attempted to sign them up.

Mr. Garrett: I will try to limit myself according to the Trial Examiner.

Mr. Schullman: I think it is very material. It may resolve this whole case. For instance, the United Steelworkers——

Trial Examiner Kent: I think the only substantial facts would necessarily have to come from respondent's witnesses, who know the facts. Then I think we could rely upon that. But where we would be just attempting to get in a lot of hearsay

(Testimony of John Despol.)

testimony that isn't material—the testimony now shows the witness has some general knowledge of the existence of the Pioneer Electric back in 1944, and it is his belief that the operation substantially ceased at or about V-J Day.

Those may not be the facts. I think the respondent would have the actual facts, facts we could rely on. I think we had better put it in that way, rather than going on a fishing expedition to see what he knows. It is still possible for the Board to probably dig up some witnesses to rebut some of those facts; it would be a difficult matter. It would [818] seem to me matters peculiarly within the knowledge of the respondent's witnesses. You are trying to get now a long-winded cross-examination I don't think you could rely on. The man would be necessarily guessing in giving testimony on it.

I can't conceive of how he would know all the intimate details of all the business set-up of those two organizations.

Q. (By Mr. Garrett): Would it be fair to put it in this way, Mr. Despol: Your organizing campaign in 1945 did not reveal to you the presence of any Pioneer Electric employees; is that right?

A. That is absolutely correct.

Q. And at the same time nobody, except perhaps your own people, had represented to you there weren't any?

Mr. Nicoson: I think I am going to object to that as being—withdraw it.

(Testimony of John Despol.)

The Witness: I have already testified to that question.

Mr. Nicoson: I think that is right. I think he has answered the question. It is just the same question with a new coat on.

Q. (By Mr. Garrett): Well, let's put it this way: Nobody had represented to you that the Pioneer Electric Company, as a partnership or corporation, or whatever it was, had been wound up, dissolved or terminated; is that correct? [819]

A. I think I have already answered that question.

Trial Examiner Kent: You might answer it, if you can.

Q. (By Mr. Garrett): Do you want the question read?

The Witness: I had previously testified I discussed the question of Pioneer Electric with some of the employees, and there was no indication in my conversations with them that Pioneer Electric Company still existed.

Q. (By Mr. Garrett): I see.

A. That it was a wartime operation in that plant.

Q. Now, conversely, had anyone represented to you that Pioneer Electric Company did not still exist?

A. I am sorry. I don't know the answer to that question.

Q. Well, you see—— A. I don't recall.

Q. You can answer this quite clearly if we get a mutual understanding on it. You have testified

(Testimony of John Despol.)

in your conversations with employees no one gave you any indication, no affirmative indication that the Pioneer Electric Company still existed. You have testified to that; haven't you? A. Yes.

Q. Is that right? A. Yes.

Q. Now I am asking you the converse of that question. Did anybody in any of those conversations or in any other conversations give you any representation that Pioneer Electric [820] did not still exist?

A. I don't think I can answer that question, except to refer you to my previous testimony and to say that in—none of the agents or representatives of the Steelworkers Union were able to find anyone going in and out of the gate to O'Keefe and Merritt to work for anyone except O'Keefe and Merritt.

Q. And you based your organizing campaign and your R petition upon that information and upon nothing else?

A. And upon live and existing workers who were organizing, not ideological characters.

Q. And you did not make any further inquiry besides what you have told us on that subject?

A. That is correct.

Q. Will you tell me whether or not you know whether anyone on the Pioneer Electric Company payroll was permitted to participate in the N.L.R.B. election which took place in November, 1945?

Mr. Nicoson: Object to that first, it is immaterial, and second, it could only be hearsay, and further, it is not the best evidence.

(Testimony of John Despol.)

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): How did you obtain that evidence of representation for the 1945 N.L.R.B. election, in what way was that evidence prepared and obtained by the Steelworkers? [821]

Mr. Nicoson: Objected to as immaterial.

Mr. Garrett: That is a preliminary question.

Mr. Nicoson: Even so it is immaterial.

Mr. Garrett: I didn't ask him what the methods were. I will withdraw the question.

Q. (By Mr. Garrett): Did you obtain your information of representation for the 1945 N.L.R.B. election by having signatures made on cards?

A. Yes.

Q. Was that a regular form put out by the local union for the United Steelworkers?

A. It was one of our regular forms. There are several we used.

Q. Was it a power for bargaining or a membership application blank?

Mr. Nicoson: I object to that. The card would be the best evidence; further, on the ground it is immaterial.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): All right. In the cards that you circulated for signatures within the plant, was there a place for the signer to write in the name of the organization by which he was—I mean the employer by which he was employed?

(Testimony of John Despol.)

Mr. Nicoson: Objected to as assuming a fact not in evidence, that they were circulated in the plant. We certainly do not concede they were, and there is no evidence in this [822] record to show that they were.

Trial Examiner Kent: Reframe the question.

Mr. Garrett: All right.

Q. (By Mr. Garrett): On the cards which were circulated, was there a place for the signature of the signer?

Mr. Nicoson: Objected to as not being the best evidence and upon the further ground that it is immaterial.

Mr. Garrett: I can't present the best evidence. The N.L.R.B. has them, and they are not public records.

Mr. Nicoson: You could present a facsimile of the card.

Trial Examiner Kent: Isn't it against public policy to inquire into those things anyway? I will sustain the objection.

Q. (By Mr. Garrett): All I wanted, before you had the election in 1945 you had to convince the Board you had some members or supporters in the plant involved, didn't you?

A. That is correct.

Q. And you did not expect the Board to take your word for it, but you presented documentary evidence?

A. That is correct.

Q. And the documentary evidence was in the

(Testimony of John Despol.)

form of some sort of a written expression signed by the individual employee, was it not?

A. That is correct. [823]

Q. And I think you told me you used several forms?

A. That is correct.

Q. On which to obtain that expression of support or application for membership or whatever it was?

A. That is correct.

Q. Were those forms substantially identical or similar?

A. They were similar in respect to bargaining authorization.

Q. They all had bargaining authorizations running to the C.I.O. local union?

Mr. Nicoson: Objected to as not being the best evidence, and immaterial.

Trial Examiner Kent: I will sustain the objection, I think, on the ground it is immaterial, if he is restricted to getting the best evidence, obviously it seems to me—I sustain the objection on that ground.

Q. (By Mr. Garrett): Did these cards that were circulated and signed have a place on all of them for the signer to write in the name of his employer?

Mr. Nicoson: Objected to as immaterial and not being the best evidence.

Trial Examiner Kent: Sustain the objection.

Mr. Nicoson: And also as having been asked and answered.

Mr. Garrett: Now I ask Mr. Nicoson in view of

(Testimony of John Despol.)

the fact that he has managed to get that objection sustained, to produce all cards filed by the [824] C.I.O. or other evidence of representation in support of the representation petition filed by the C.I.O. at the O'Keefe and Merritt plant in 1945.

Mr. Nicoson: Mr. Garrett knows very well that I can't make that production. He has already stated as a fact and I concede it to be so, that those cards are received in confidence and they are held by the Board in confidence, and they are not shown to anyone except the Board agent and to the person who brings them in here. Mr. Garrett knows that and knows that I can't produce them under those circumstances. [825]

Mr. Garrett: He is here and I am trying to get the facts from him respecting this matter by proper testimony of a man who knows. I am trying to ask the man under whose supervision they were circulated. Then he objects that that is not the best evidence, and I ask for the best evidence and he says that he has got that and he won't show it to me.

Mr. Nicoson: He knows that I can't show them to him. He would be the first guy to scream to the top of this building if I put in such a practice around this office. What I have been trying to show to your Honor, he has been asking the substance of a written document. He knows as a lawyer that the best evidence is the production of those documents. All he has got to do is to ask this witness to produce the documents or facsimiles

(Testimony of John Despol.)

or copies, like we have done with the Machinists on these matters, and I have no objection to that action, but I certainly do object and I am not going to be a party to revealing any names of anybody who signed any union card in this proceeding, and he knows that very, very well.

Mr. Garrett: I do not withdraw my question and I stand on my demand.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: To which ruling I except. [826]

Trial Examiner Kent: I think we are probably wasting a good deal of time. There has been an election and a certification. Why isn't the certification the answer on this particular line of inquiry?

There is another phase of the case, of course, now, I think, that the identity of interests, of the partnership, that will largely be determined on some evidence that is in now and other evidence that may come in through the respondent's case or possibly the Board may put some additional evidence of that sort in prior to the respondent putting in its case.

Mr. Garrett: I am going to try to school myself not to argue with or after the Trial Examiner's ruling. I always try to take the ruling and abide by it. Since your Honor has made that observa-

(Testimony of John Despol.)

tion, I will just ask one question which I think will show whether or not my question was pertinent. I have a right to ask this Trial Examiner to believe that I am asking them in good faith.

Trial Examiner Kent: Oh, yes, I assume that.

Mr. Garrett: That question I will ask your Honor is this; and I am not sufficiently inured to appearing before the National Labor Relations Board to run around making offers of proof which are unsubstantiated, and offers of proof are made much more lightly here than they are in the courts, so without representing to your Honor what this witness would testify in response to last question to which [827] objection was sustained and the questions which would logically follow it, I will ask your Honor what your Honor would think if that question were allowed and this witness testified that he received several hundred of these cards and that 50 or 60 or 70 of them gave the name of Pioneer Electric Company as the employer.

Trial Examiner Kent: Well, I will permit you to ask the question in this form: Did any of the cards contain an entry by some of the signatories endorsed thereon that they were employees of the Pioneer Electric?

Q. (By Mr. Garrett): Will you answer the question as propounded by the Trial Examiner?

Mr. Nicoson: I would not object to that.

Mr. Tyre: I would, on the ground it is immaterial, but just to save time——

(Testimony of John Despol.)

Mr. Garrett: No one can say the witness is not forewarned.

Mr. Tyre: Both ways.

The Witness: There were no cards, to my knowledge, in which the employee indicated that he was an employee of the Pioneer Electric.

Mr. Garrett: That is right.

Q. (By Mr. Garrett): Now, all we want to do is just check that. There were no cards bearing such indication, to your knowledge? Did you look at the cards yourself? [828] A. Most of them.

Q. Was that part of your duty as an international organizer for the United Steelworkers, to handle those cards, or were they handled by the local union?

Mr. Nicoson: I object to that as immaterial, whether it was a part of his duty or it was not, he did see the cards and he reported what he saw. What more do you want?

Trial Examiner Kent: I think that a material element.

Q. (By Mr. Garrett): I say, was it part of your duties as an International man, to handle those cards and check them?

A. Well, I signed up some of the cards myself. Some were signed up by the local union representative or by other International representatives, and when I brought the cards down to the Board I went over the cards myself, ran through them rapidly.

Q. You ran through the cards you brought down

(Testimony of John Despol.)

to the Board, is that correct? Now, with respect to the cards that were signed, you think you saw most of them, is that correct?

A. Well, I ran through them all when I went down to the meeting, and we took all the cards we had at that particular time to the Board.

Q. Well, you checked every one at that time to make sure that none of them gave the Pioneer Electric as the employer?

Mr. Nicoson: I object to that as not being the correct statement of the witness' testimony, assuming a fact not in [829] evidence. He did not say he checked every one. He said he checked most of them.

Q. (By Mr. Garrett): All right. Now, with respect to other cards which might have been signed and not brought up and presented to the Board, you would not have seen them, would you?

A. No, but I am sure that if any card had been signed which had on it the name Pioneer Electric Company that Mr. Colville, Mr. Conway, Mr. Anaya, or any other representative of the local or international union would have brought it to my attention. They should have.

Mr. Garrett: I move to strike that answer as non-responsive, and have the question read to the witness.

Mr. Nicoson: I object to its being stricken. I submit it is responsive and it is exactly what he asked for.

(Testimony of John Despol.)

Trial Examiner Kent: I think the answer is generally responsive. The answer may remain.

Mr. Garrett: I move to strike it on the ground now that it represents a conclusion of the witness.

Trial Examiner Kent: It represents what?

Mr. Garrett: A conclusion.

Mr. Nicoson: I oppose that on the same ground.

Mr. Schullman: You mean it represents a conclusion, counsel?

Trial Examiner Kent: The objection goes to the weight [830] rather than anything else. The record will remain.

Q. (By Mr. Garrett): Were you ever inside the plant prior to the election?

Mr. Nicoson: I am sorry. I didn't get that question, please.

Mr. Garrett: Were you ever inside the plant prior to the election?

The Witness: Only at the time I was fingerprinted several years before.

Q. (By Mr. Garrett): No other occasions?

A. No other occasions. Well, before that I—no. I was going to say the time I cleared up the question with the Army with respect to solicitation and delivering literature and so on. I think that was simply done with the guard at the door or the gate or the door there, the office, right at the door, but not inside the plant proper, that is for sure.

Mr. Garrett: May I see the contract which is in

(Testimony of John Despol.)

evidence, the C.I.O. contract, Board's Exhibit 10?

Q. (By Mr. Garrett): This contract, I notice, is on mimeographed sheets. Was this contract mimemographed particularly for presentation to this employer, or is it a general form?

A. It is in general form, but the particular subject matters that were combined to make that particular contract were voted on by members of our union employed at O'Keefe and Merritt at a [831] special meeting called for that purpose.

Q. So that in part this contract contains your general provisions that are general to them?

A. The language is more or less standard in respect to procedural and policy matters of the contract.

Q. I notice that some of these pages are keyed, that is, they have a key number in the upper right-hand corner. Do you pursue the system of having various standard provisions mimeographed so that they can be assembled into a contract for special occasions?

A. That is correct.

Q. The United Steelworkers have a number of written contracts with employers in this area, have they not?

A. They do.

Q. And had at the time of this contract, Board's 10, a number of written contracts with other employers in this area?

A. Yes.

Q. Several hundred, I should say, probably? Would that be a fair statement?

A. No.

(Testimony of John Despol.)

Q. More than a hundred, anyway, perhaps?

A. If you define in this area as Los Angeles, it would be less than a hundred.

Q. But still a substantial number, correct?

A. Yes. [832]

Q. And many of them have been formed by assembly of these mimeographed sections such as I now am paging before me in Board's Exhibit 10, is that correct?

A. Some of them have.

Q. Some of your contracts presently in effect and in effect at the time you presented Board's 10 to the company for the first time have clauses in them providing that in the event of a sale or other succession to the employers' business, the contract shall continue in effect between the labor organization and the successor or new employer. That is a fact, is it not?

A. I don't believe we have any contract that has that provision in it locally.

Q. Would you say you have not?

A. Well, there may be one or two exceptions. There may be one or two exceptions I do not recall at the moment, but I can think of no particular contracts that have a successor's clause in respect to companies.

Mr. Schullman: It wouldn't be good if you had, anyway.

Q. (By Mr. Garrett): So that the omission of such a clause in this proposed clause has no particular significance in your mind?

(Testimony of John Despol.)

Mr. Nicoson: Just a moment. Let me have that question again.

(The question was read.) [833]

Mr. Nicoson: I think that assumes a fact not in evidence, and it is not an omission. The witness' testimony is that he does not recall it was in any of those contracts. I object to it on that ground.

Mr. Tyre: I object to it on the further ground that it calls for the state of mind of the witness, which state of mind, so far as I can see, has no materiality to the issues in this case.

Mr. Nicoson: And on the further ground it is argumentative.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: The answer may be taken. You may answer it.

The Witness: Well, I would not characterize it as an omission.

Q. (By Mr. Garrett): It is not here, though, is it?

Mr. Tyre: I object to that. The exhibit speaks for itself.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): You knew at the time you presented this contract that it did not contain any provision relating to the sale of or succession to the business, did you not?

Mr. Tyre: Objected to on the same grounds.

Trial Examiner Kent: Objection sustained. [834]

Mr. Nicoson: Objection on the same grounds

(Testimony of John Despol.)

previously stated and on the further ground it is immaterial.

Q. (By Mr. Garrett): I notice that you provide in this proposed agreement, which is Respondent's Exhibit 10, for——

Mr. Nicoson: Board's 10.

Q. (By Mr. Garrett): ——Board's 10, for adjustment of wages in the event of certain occurrences that might take place after the agreement is signed. A. That is correct.

Q. You anticipated that there might be such a change in conditions as would require you to protect against it in your contract, is that correct?

A. No, the clause that you refer to provides that when a new classification or occupation or trade comes into the plant, it provides the procedure to decide the rate for the new classification, occupation or procedure, or where the job content of an old job classification whose rate is set at the time of the execution of that contract, where such job content is substantially changed to either increase or decrease the value of that job, there is the procedure set-up for re-determining the valuation of that job in line with the rate structure for the entire plant.

Q. There are no wage scales attached to this contract. Were any wage scales proposed to be incorporated in the contract ever presented to anyone in writing? [835]

A. Our wage proposal was to increase the exist-

(Testimony of John Despol.)

ing rates 25 cents a hour, and then to attach those rates to the contract.

Q. Was that proposal made orally?

A. In writing, in the contract.

Q. I am going to read you from the section on the fifth sheet on Board's Exhibit 10 designated by the capital letter B and headed "rate establishment and adjustment." [836]

Mr. Tyre: Which page is that on?

Mr. Garrett: Page 5. The pages are not numbered, but it is the 5th sheet.

Q. (By Mr. Garrett): "B. Rate establishment and adjustment. It is recognized that changing conditions and circumstances may from time to time require installation of new wage rates."

Do you mean that to apply only to new jobs or classifications, or is that to have general application to the entire wage scale?

A. It applies only to new jobs, new classifications, or to where the job content of an old job classification is substantially changed. It does not pertain to any job classification or any job rate where there is no substantial change in job content and the rate has been set by the institution of the contract or the rate of the individual.

Q. Did you ever propose to anybody that the Pioneer Electric Company be made a party to any contract?

A. No.

Q. Did you ever propose to anybody in connection with the negotiations you have testified to here that in any contract arrived at there be incorporated

(Testimony of John Despol.)

provisions which would cover Pioneer Electric employees? A. No.

Q. Did you ever inquire of anybody in the year 1945 besides your own members as to the then status of the Pioneer Electric Company? [837]

Mr. Nicoson: I object to that.

The Witness: I believe I testified to that.

Mr. Nicoson: I object to that, Mr. Examiner. He is starting back over that ground now. I object to all that.

Trial Examiner Kent: Read the question.

(Question read.)

Trial Examiner Kent: That is purely repetitious. We had an answer to that earlier in your examination.

Mr. Garrett: Sustained?

Trial Examiner Kent: I say that is purely repetitious. You took the answer earlier in your examination.

Mr. Garrett: I take it the objection is sustained.

Trial Examiner Kent: How is that?

Mr. Garrett: I take it the objection is sustained?

Trial Examiner Kent: The objection is sustained.

Q. (By Mr. Garrett): Did you ever propose to anybody, in connection with any contract, the inclusion of a clause which would protect the union in the event of a change in the ownership of the business? A. To any company?

Q. Yes. A. No.

Q. That goes for the entire year 1945?

(Testimony of John Despol.)

A. I would say that is correct. [838]

Q. Did you ever try to make a contract with anyone in the negotiations that you have testified to here that would go beyond the scope of the bargaining unit obtained in the ascertainment of representation as a result of the N.L.R.B. election in the O'Keefe and Merritt matter in November, 1945?

Mr. Tyre: I object to that. That calls for a conclusion. The question of what the certification covered, I believe, is one of the matters which is now before this Board. I don't think any answer this witness could give, as to what he thought that certification was or whether or not he asked for a unit bigger or smaller than that certification is material, nor would the answer be a competent one given by the witness. That is a matter I think, your Honor, for the Board to determine.

Mr. Garrett: The reason I asked that question—I don't want to argue it—is contained in the first page of the proposed agreement, Board's 10, Section 1, A.

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: I think I have no further questions to direct to this witness. I would appreciate, however, before he leaves the stand if we might have the afternoon recess at this time, as I would like to run over my notes.

Trial Examiner Kent: We will take a five-minute recess.

(Short recess taken.)

(Testimony of John Despol.)

Trial Examiner Kent: On the record. [839]

Q. (By Mr. Garrett): During the recess, Mr. Despol, have you had an opportunity to look at the original R petition in Case No. 21-R-2298?

A. Yes.

Q. As being the R petition filed in the case by the Steelworkers C.I.O. union in 1944?

A. I have.

Q. It is a fact, is it not, that the employer mentioned there was O'Keefe and Merritt Company?

A. That is correct.

Q. And that the unit petitioned for was all production and maintenance employees? A. Yes.

Q. Is that correct? A. That is correct.

Q. And that no other labor organizations were named by the C.I.O. as being interested in the event of that proceeding? A. That is correct.

Q. Now, I think you told me during the recess you had a correction to make in your former testimony on cross-examination, before the recess.

A. During the recess I talked with Mr. Conway and Mr. Anaya, both of whom were present and represented our union at the hearing in 1944, and both of them tell me I am in error with respect to Pioneer Electric, that that was—Mr. Conway [840] said it was some trucking company whose payrolls possibly were involved in the eligible employees. Mr. Anaya said one of the reasons why we did not secure an election order at that time was because a large number of employees had been laid off just prior to the hearing in which the payroll was produced,

(Testimony of John Despol.)

and therefore those names did not appear on the company payroll. That was the primary reason for our failure to secure a Board order of election.

So apparently I misunderstood Mr. Anaya's brief conversation with me in an automobile when I returned from Washington. I thought he was talking about the same company.

Mr. Garrett: No further questions.

Mr. Schullman: On behalf of Local 792 no cross-examination.

However, I did wish to now make a motion to strike the testimony of this witness insofar as it may attempt to relate to Local 792, for the reasons that it is immaterial, incompetent, irrelevant; doesn't tend to prove or disprove any of the issues in respect to Local 792. I make that motion first.

I would also like to make a motion—I don't think my associates made it in my absence—to strike Board's Exhibit No. 10, the C.I.O. contract, for the same reasons, on behalf of Local 792, and all the grounds heretofore given.

The Witness: I would like to also correct my testimony [841] in respect to one question Mr. Garrett asked me.

Mr. Garrett: Go right ahead.

Trial Examiner Kent: I will reserve ruling on the motion, pending consideration of the entire record.

Mr. Garrett: You had another correction, Mr. Despol?

(Testimony of John Despol.)

The Witness: Yes. On the question you asked me of whether or not we ever attempted to bargain for employees of Pioneer Electric, in view of the dubious status——

Mr. Garrett: Just a moment. Did I ask you that question? I asked you a number of questions relating to whether or not you attempted to have them included in any contract or attempted to have any succession clauses put in. I don't think I ever asked you whether you attempted to bargain for the Pioneer Electric employees. If you are in accordance with me, in agreeing on that, I think it would be more proper for Mr. Nicoson to bring out the matter that you are now attempting to relate. If you think I did ask you whether you ever attempted to bargain for Pioneer Electric employees——

The Witness: I am referring to the contract question. Your specific point on the contract was that when Mr. Collins called me on the telephone, after our meeting at the second meeting, at the cocktail bar, and again stating his offer was still open, I told him at that time it was still——our answer was still no. And that we were only interested [842] in securing a contract for the employees at the O'Keefe and Merritt Company.

He said, "Well, we have no employees." I said, "Well, the employees working at that plant, whoever they may be employed by or whatever may be the dubious status of the Pioneer Electric, to that extent that is our position, that the contract covers

(Testimony of John Despol.)

the employees of Pioneer Electric, if that is the status."

Mr. Garrett: No further questions.

Mr. Reed: On behalf of the International Association of Machinists, inasmuch as the testimony of the witness has no bearing upon the legality of our contract presently in existence with the Pioneer Electric Company, on the basis that that determination of legality would be made as to whether or not the Pioneer Electric Company is a separate identity from O'Keefe and Merritt, and that that fact alone will, we believe, be the deciding factor as to whether our contract is legal, we have no cross-examination.

Cross-Examination

By Mr. Tyre:

Q. Mr. Despol, you testified, I believe, to questions from Mr. Collins either yesterday or this morning concerning the second meeting that you had with him at Carl's Restaurant at Olympic and Soto. In your testimony you stated that Mr. Conway asked Mr. Collins, after Mr. Collins had offered this money, how you could [843] accept that money and still save face.

A. How he accept that money and still save face?

Q. Yes. My recollection of the testimony at that point, as to what Mr. Collins replied to that question by Mr. Conway, is a little vague. I wish you would clarify that for us.

Mr. Garrett: Counsel's recollection is no——

(Testimony of John Despol.)

Q. (By Mr. Tyre): Also, I think the record is ambiguous on that point.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Kent: You may answer.

The Witness: Mr. Conway asked the question how could we do it and still save face?

Mr. Collins replied that we could confine our activity to filing unfair labor practice and to agreeing to a Labor Board election and going down in a blaze of glory, I think is the phrase he used, and cease any other organizational activities or any economic pressure that the steel workers union might possibly exert then or in the future; cease and desist all the union activity.

Q. (By Mr. Tyre): Did Mr. Conway make any reply to that remark concerning the unfair labor practice charge?

A. Oh, yes. My Conway then said, well, eventually a Board order would come out directing the company to cease [844] and desist against unfair labor practices and wouldn't he be right back where he started, namely, Mr. Collins, and the company.

Mr. Collins said that he wasn't worried about that, that that would take a matter of a couple of years, and that in the absence of activity by ourselves there would be no organization of the Steel Workers union in that plant.

Q. Did he mention anything about the courts at that time?

A. He stated that he would see to it that the

(Testimony of John Despol.)

matter went all the way through the courts of our country, in respect to the enforcement of the Board order.

Q. I think you testified that Mr. Collins also stated at that second meeting at the bar at Carl's at one point that he was willing to raise his offer to \$1500.00. Could you repeat to us, as well as you remember, the exact language that Mr. Collins used when he made that statement?

A. He said, "I can let you have \$1,000.00 or \$1500.00 for your trouble." I will correct that. He said, "I could let you have \$1500.00."

That was after he had repeated his offer of \$1,000.00.

Q. Did you ever tell Mr. Collins how much money the union had put out for its organizational expenses in this campaign at O'Keefe and Merritt?

A. No. In fact, I don't ever attempt to estimate it myself, much less to say it to anyone else. [845]

Q. By the way, Mr. Despol, do you get time and a half or any other premium when you work after 4:30?

A. No, but I wish I did. I need a bargaining agency on that point.

Q. What do you consider to be your working hours when you are working on the payroll of the International Union?

A. Any hour of the day or night has been my experience, subject to working for the union in an official capacity.

Q. I think you testified to a question by Mr.

(Testimony of John Despol.)

Collins that it was true he does sometimes drink double Scotches and water.

Do you recall whether or not on this particular occasion, that is, at the second meeting at Carl's bar, whether or not he was drinking double or single Scotches?

A. I don't recall whether he was drinking double or single at the second meeting. I do definitely recall he was drinking double Scotches at the first meeting.

Q. Is that clause of the proposed contract, which you made to Mr. Collins concerning new rates for old jobs and new rates for new jobs not already in the plant when the contract is made, a standard clause for your Union?

A. It is a standard clause for our Union. In fact, it first originated with the basic steel contracts in 1937. Then it was subsequently substantially modified by the decision of the National War Labor Board in the so-called basic steel case in which its present form is as presented to [846] this particular company. And for that matter, with all other companies that we have dealings with.

I may say that Mr. Lund, who is in the audience and myself, may both qualify as lay experts on that particular question. It has been argued very vigorously on every negotiations we have had.

Mr. Tyre: No further questions.

(Testimony of John Despol.)

Redirect Examination

By Mr. Nicoson:

Q. Was it at the first or second meeting at the bar that the question of you being young fellows occurred? Do you recall that part of the testimony?

A. Yes. Mr. Collins, when he told the story of this old time A.F.L. business agent, who, according to his statement, was thrown on the trash heap by his international union, he stated as we were young fellows we ought to look out after ourselves and be less concerned about the international union.

Q. At which session was it?

A. At the second session.

Q. That is when Mr. Conway was there?

A. When Mr. Conway was present, when he said young fellows. He was referring to Mr. Conway, who is older than myself, and myself.

Q. Was it after this the question of the \$1,000.00 and \$1500.00 came up? Is that correct?

A. Yes. [847]

Mr. Nicoson: No further questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Nicoson: At this time, if your Honor please, pursuant to stipulation which we entered into yesterday I have had copied the memo of Mrs. Phoenix, which we reserved in the record as Board's Exhibit 9. I ask they be marked and received as part of the record, pursuant to that stipulation.

Trial Examiner Kent: The prepared copies may be received in lieu of the original.

(Thereupon, the document heretofore marked Board's Exhibit No. 9 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 9

(Copy)

Re: O'Keefe & Merritt Co.

Case No. 21-R-3101

MEMO

11-5-45:

A conference was held today on the above case. Those present were Mr. John D. Roberts of the Stove Mounters, Nick Cordil of the Carpenters, W. T. Blaney of the Teamsters, Cecil Collins, Attorney, and F. F. Rotten, Personnel Manager for the Company, and John Despol and Gilbert Anaya and G. J. Conway for the Steel Workers.

Roberts stated that Lazarini of the Molders intended to intervene for the foundry workers. Lazarini was not present, however and has not communicated with me.

Cordil wishes to represent the carpenters, millwrights, graders, woodworkers and construction maintenance men. It appears that there are 14 carpenters and 7 or 8 millwrights employed by the Company at the present time. The carpenters' location is physically separated from the rest of the shop, although under the same roof, by a partition. One-third of the carpenters work in this shop and the rest work throughout the plant doing maintenance work. They are headed by a craft foreman who reports to the assistant plant superintendent.

There are no graders or wood workers at the present time. There is one millwright sub-foreman who has three men under him and reports to the assistant superintendent. This group does general work throughout the factory, repairing pipe and doing all-around machinery maintenance. The other millwrights, of which there are approximately 4, report to the toolroom foreman who in turn reports to the assistant plant superintendent. The work of these millwrights is confined to drill presses and punch presses. They have little or not contact with the other millwrights and most of their contact would be with punch press and drill press operators. Cordil submitted 23 cards.

The Teamsters' representative, Mr. Blaney, did not produce any showing of interest and was told that he had until Thursday to bring his interest in. All but two of the Company's truck drivers are at present on the Company payroll. The other truck drivers are carried on the payroll of another company but when O'Keefe & Merritt goes back into full production these truck drivers will be added to their payroll. Beside the truck drivers Blaney wishes to represent five of the warehouse employees. There are approximately four people working there now with an anticipated 12 people by the first of the year. The shipping department is in the warehouse. There is a separate foreman for the warehouse who reports to the plant superintendent. The warehouse is under the same roof as the other units and is not physically separated.

The CIO is interested in the warehousemen but wish to exclude the truck drivers. Normally there is no transferring of warehouse employees to other operations although now with a reduced force there is some.

All of the remaining employees should be in the production group which at present has about 260 people, 40 or 42 of them working in the machine shop of the Company which has its own foreman who reports to the superintendent. The machine shop is separated physically from the rest of the plant. While the people in the machine shop do not work on a bonus piece work system, the remaining production employees do. In all there are five foremen over the remaining production employees who report directly to the plant superintendent. Classifications such as general assemblers, fabricators and enamel workers are included in the production group.

The CIO wishes to include the foundry employees who are under the same roof as the other employees but their work place is physically separated by a partition. There are 54 or 56 employees in the foundry who receive their orders from one foreman who reports to the plant superintendent. Two of the foundry employees work nights. These are the only night employees at the present time. Blaney states that Lazarini of the Molders intends to intervene for these foundry workers.

All of the employees are hourly paid. The Company makes no claim as to the appropriateness of any unit and agrees that subforemen are not super-

visory and are eligible to vote, but that foremen should be excluded. All agree on these points.

Collins stated that the Company is in a reconversion period at present and intends to be in full production some time after the first of the year, and at that time they believe their personnel will be in the neighborhood of 600 employees, which is about a one-third increase over what they have at present. It was agreed that the service men (referring to those who give customer service and not those in military service) should be eligible to vote in the production unit, and that timekeepers, office clericals and guards would be excluded. Despol stated that he wished to represent the guards (of which there are but 7) but would file a separate petition for them.

Collins does not wish to consent to a globe-type election where it might turn out that he had some AFL groups and some CIO groups in his plant. Despol suggested that it could be worked out where just the AFL and the CIO would appear on the ballot by having the Metal Trades represent the crafts. Cordil and Roberts thought this could be done. Collins stated that he would not consent to an election otherwise, and didn't know if he would even then. He is to call me up Wednesday to inform me what the Company's decision is. Cordil, Roberts and Despol stated that they would consent to an election and set the date for November 20, and this was agreeable to Collins if he consents.

BERNICE T. PHOENIX,

Field Examiner.

[Endorsed]: Filed March 19, 1946.

Mr. Nicoson: If your Honor please, I think the parties and I have agreed to stipulate that memo prepared by Mrs. Phoenix about a conference which occurred in the Board's office on the 13th of November, 1945, in re: O'Keefe and Merritt, Case No. 21-R-3103, may be read into the record as substantially what occurred at this conference.

I understand there is some objection by Mr. Schullman. However, he is not bound by it, but he has indicated he is willing to stipulate that this is what occurred. Since it is very short I will ask permission to read it into the record, rather than having it copied, as it is not quite half a page. [848]

Mr. Schullman: No objection to having it read into the record.

Mr. Garrett: I am sorry if I misled counsel. I am not going to be able to stipulate that memorandum in. I guess I did mislead you.

Mr. Nicoson: You sure did. [849]

Mr. Garrett: Upon thinking it over, I feel it contains various conclusions, and I rather think that it is not sought by that memorandum to bind any of the parties except to the contract here I represent. It is a memorandum of a conference that took place in the place in the absence of both representatives of the company and of the C.I.O.

Mr. Schullman: When I said I had no objection to reading the record in, I have no objection to the form. Of course, I will object——

Mr. Garrett: I will stipulate that Mrs. Phoenix, while I do not object to the form, I mean I don't

object to it on the ground it is not the best evidence, but if it were offered for the record I would want to object on the ground of foundation and upon the ground that it contains various conclusions and that I would want those conclusions out.

Mr. Schullman: Of course I object to the substance thereof insofar as it may attempt to bind my clients. I object, without repeating the reasons, for all the reasons constantly interjected by us during the course of these proceedings.

Mr. Nicoson: Well, of course yesterday I tried to inquire from Mr. Despol what went on in that conference and Mr. Garrett objected and suggested that the memorandum prepared by the field examiner would be the best evidence, so I agreed to put in the memorandum at that time. Now I have a further memorandum of a further conference, and I was just trying to [850] do what they asked me to do yesterday. Now apparently today it is not as good as it was yesterday.

Mr. Garrett: I do not object to this on the ground it is not the best evidence.

Mr. Reed: I will stipulate to the memorandum being the best evidence, and will object to its being binding upon the I. A. of M. Inasmuch as I believe this is a little ambiguous in referring to A. F. of L. craft unions, it might be interpreted to include the I. A. of M., and for that reason I object to it being binding upon the International Association of Machinists.

Mr. Garrett: You see, this is a matter apparently upon which Mr. Nicoson could not introduce

any evidence from the witnesses he has here. We stipulated yesterday because we were in a position where we had a member of the C.I.O. who had been present at the meeting, but this memorandum does not purport to be a memorandum of anything except a discussion between Mrs. Phoenix of the Board and Mr. Sokol, an attorney, and a Mr. Laster, who is described as being identified with the Metal Trades Council. I think that points to the difference between the situation we are in on this memorandum and the one that we had on the other.

Mr. Nicoson: I can still call Mr. Conway to testify as to what happened and I will.

Mr. Garrett: Was he there? [851]

Mr. Nicoson: Yes, he was there.

Mr. Garrett: Let's look at that again.

Mr. Nicoson: Well, your Honor, in the same manner that the previous memorandum was entered by the stipulation of the parties, I at this time offer for the same purpose the second memorandum prepared by the field examiner, Mrs. Bernice Phoenix, dated November 13, 1945. I understand that counsel has some objection they would like to state at this particular time to the offer of this document.

Mr. Garrett: I do not object to the offer on the ground it is not the best evidence. I will stipulate that Mrs. Phoenix would so testify if she were called to the stand. But various of the statements made in that memorandum would, I believe, be subject to objection on the ground of lack of foundation, that they are not binding on various of the A. F. of L. unions involved, and as being conclusions.

Mr. Schullman: We merely renew our objections, not as to the form but as to the substance, as not binding on 792, and being insofar as they are concerned pure hearsay, incompetent, irrelevant and immaterial.

Trial Examiner Kent: Who was present at this conference?

Mr. Nicoson: Mr. A. E. Laster, Metal Trades Council, Mr. Sokol, Mr. Rotter appeared for the company, Mr. Conway and Anaya for the Steelworkers. The memorandum contains this statement, and I suppose this is the part that Mr. Garrett objects to: All of the A. F. of L. craft unions were represented by Mr. A. E. Laster. If that is the particular one, maybe we can work out something on that. Is that what you objected to, Mr. Garrett?

Mr. Garrett: Well, yes. I don't know what the circumstances are in that regard. I can't stipulate to that.

Mr. Nicoson: What about the rest of it?

Mr. Garrett: There are other conclusions also and I think she might not be permitted to testify over objection, statements with respect to the unit and the payroll to be used. I don't know anything about those agreements. If the Board can show that the agreements were made and that the persons purporting to bind these parties to the contract were authorized to do so, that is one thing, but in the absence of knowledge of my own on those points, I don't know whether—I was not representing any of those unions in the Metal Trades Council at the time of the meeting, and I can't.

Trial Examiner Kent: Well, if there is any ambiguity, any objection, it might be better to take some testimony by some party who was present.

Mr. Nicoson: Very well. Now, because of the hour, and I doubt very much that it will be possible to get Mr. Collins here, and we also discussed just prior to the luncheon recess, either on or off the record, the possibility of obtaining some stipulations, I would like to go off the record at [853] this time in order to discuss with counsel present the possibilities of arriving at such stipulations.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Schullman: I think I have indicated to the Trial Examiner that I won't be here tomorrow or any of my associates. However, since we won't be here, on the stipulation entered into between counsel for the Board and Mr. Collins, we have no objection thereto and we are not a party thereto. We are not bound. Similarly, may we have the same type of a motion to strike that part of the testimony concerning which Mr. Conway will testify tomorrow, for the same reasons we have heretofore urged?

Trial Examiner Kent: So far as it might be binding upon your client, yes, that may be a continuing objection. I will reserve ruling on the motion to strike. Well, in view of the fact that Mr. Collins stated that he was ill just prior to the noon recess, it would not be advisable, I don't believe to put on another witness at this time. I will say it is practically 4:30.

Mr. Nicoson: I think I have indicated on the record that I would not do so.

Trial Examiner Kent: I think that was true, at the time you entered into the other stipulation. It was apparent at [854] that time that we would consume substantially all the afternoon with the balance of Mr. Despol's testimony. We will adjourn then at this time until 9:30 in the morning.

(Whereupon, at 4:30 o'clock a.m., Tuesday, March 19, 1946, an adjournment was taken until Wednesday, March 20, 1946, at 9:30 o'clock a.m.) [855]

Wednesday, March 20, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: We might proceed at this time. All counsel are apparently present, excepting Mr. Schullman. Mr. Schullman stated to me just prior to the adjournment last night he probably would be unable to be here this morning.

My statement may have been a little incomplete. Mr. Stevenson is not here, also. Mr. Stevenson indicated on the record several days ago that he, in all probability, would not be present for most of the balance of the hearing. And at the time stated his position in reference to the case on the record.

Mr. Nicoson: I think, if your Honor please, Mr. Collins and I have arrived at a stipulation with respect to Board's proposed witness G. J. Conway.

It is stipulated between us that at the meetings that Mr. Conway attended in Mr. Collins' office and

at the two meetings or gatherings at the bar in Carl's Restaurant——

Mr. Collins: He was only at one of them.

Mr. Nicoson: That is right. That second meeting at Carl's.

Mr. Collins: Yes.

Mr. Nicoson: That is correct. That if Mr. Conway was called as a witness, he would, on direct examination, be asked substantially the same questions as those put to Mr. [860] Despol with respect to those meetings which he attended; and that he would give substantially the same answers; and that upon cross-examination he would be asked substantially the same questions as put to Mr. Despol with respect to those same meetings; and he would give substantially the same answers.

Mr. Collins: I will accept that stipulation.

Mr. Nicoson: It is further stipulated that if Leslie LaFrankie, Perry William Nethington, William Frank McCaskell and Robert N. Sutherland were called, with respect to the last meeting in Carl's Restaurant Cocktail Lounge, which has been fixed as February 1st, that if those four witnesses were called, with respect to that meeting, they would be, on direct examination, asked substantially the same questions as Mr. Despol was with respect to that meeting; and that they would give substantially the same answers thereto; that upon cross-examination they would be asked substantially the same questions with respect to that meeting as Mr. Despol was; and that they would give substantially

the same answers that he did with respect to that last meeting at Carl's.

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record?

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: I will accept that stipulation. By my [861] acceptance of both of those stipulations, I do not mean that those people are necessarily telling the truth. I mean by that that they would so testify.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: Mr. Conway.

G. J. CONWAY,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. State your name for the reporter.

A. G. J. Conway.

Q. What is your business or occupation?

A. Representative, United Steelworkers of America, District 38.

Q. And your address?

A. 4110 East Slauson Avenue, Maywood, California.

Q. Mr. Conway, there is in this record some testimony with respect to conferences held in the Board's office leading up to a certain document which has been identified as Board's Exhibit 4.

(Testimony of G. J. Conway.)

Trial Examiner Kent: For identification.

Q. (By Mr. Nicoson): For identification. Did you attend any of those conferences in the Board's office?

A. Yes, I did. [862]

Q. How many conferences were there, as you recall?

A. Three.

Q. Did you attend all three?

A. I did.

Q. It has been stipulated into the record and a memorandum has been put in with respect to the occurrences at the first of those conferences, and the date was fixed as November 5th. Now, as to the second conference you attended, about how long after the November 5th conference did that occur?

A. It was November 13th.

Q. And who was present at that conference? First, where did it occur?

A. It occurred in this room here.

Q. Who was present?

A. For the Board was Mrs. Phoenix. For the company was Mr. Fred Rotter, personnel man of O'Keefe and Merritt. For the United Steelworkers of America Mr. Gilbert Anaya, a representative, and myself. For the A. F. of L. was Mr. Sokol.

Q. Who is Mr. Sokol?

A. I believe he is an attorney for the A. F. of L. I am not sure, but I believe he is.

Q. Is that David Sokol?

A. Yes.

Trial Examiner Kent: The A. F. of L. is rather a broad term.

Mr. Nicoson: Yes.

(Testimony of G. J. Conway.)

Q. (By Mr. Nicoson): Can you be more confining than that?

A. I do not know which of the A. F. of L. groups he represents.

Mr. Nicoson: Will you stipulate that he appeared before the Metal Trades Council on that occasion, Mr. Garrett?

Mr. Garrett: I will stipulate that.

Q. (By Mr. Nicoson): Who else was present?

A. Mr. Laster of the Metal Trades Council, Mr. Roberts of the Stove Mounters Union, Mr. Cordell, Cordell, I believe, is his name, of the Carpenters Union, Mr. McMurray of the Machinists Union, Mr. Blaney of the Teamsters Union, and to the best of my recollection Mr. Lazzerini of the Moulders Union.

Q. What was said at that time and place and who said it?

A. Do you want the whole conversation, sir?

Q. Yes.

A. Well, the meeting at that time, we were discussing the appropriate people that were eligible to vote. We had some discussion in regards to expeditors, timekeepers, production control, and other classifications. The argument at that time was between the A. F. of L. and the Steelworkers Union. We ironed out all those differences and everything was settled with the exception—— [864]

Mr. Garrett: I object to that as being a conclusion.

(Testimony of G. J. Conway.)

The Witness: Everything was settled but——

Mr. Garrett: Just a moment. I object to the statement “everything was settled” and ask the witness be confined to relating the conversation.

Trial Examiner Kent: Yes, you may say just what the items were that were settled.

Mr. Garrett: If your Honor please—— [865]

Trial Examiner Kent: Better break it down into the conversation, what statements various people made.

Q. (By Mr. Nicoson): Will you please do that? A. I cannot remember.

Trial Examiner Kent: Well, naturally, but the substance, to the best of your recollection; you may not be able to give it verbatim. We hardly could expect that unless you made notes at the time.

Mr. Garrett: I ask the witness be directed to relate to the best of his recollection what was said and who said it.

Trial Examiner Kent: Yes, I think that is a proper request.

The Witness: As I remember one part of the conversation in regards to expeditors, and production control, Mr. Sokol was insisting that they be included to vote. I took the position for the Steelworkers Union that they came under clerical or office help and was asking that they be excluded. To the best of my recollection it was finally agreed that they would not be able to vote. We then had discussion on the time that the election was to be held.

I took the position for the Steelworkers' Union

(Testimony of G. J. Conway.)

that the election should be held at 4:30, right after work. The A.F.L.—I do not know who at that time was speaking for them—I do not remember—took the position that they wanted it held on working hours. [866]

Mr. Rotter for the company stated that he would get in touch with Mr. Collins and see which would be agreeable for the company. He then called—left the hearing room and called the company, and came back in and said he had been unable to reach Mr. Collins, and he would have to let us know the next day. A meeting then was arranged for the next day, to sign the consent papers of the election.

Q. What was said about that, if anything?

A. Mr. Lassiter of the Metal Trades Council stated, "I cannot be here tomorrow to sign the consent papers."

After some discussion among the A.F.L. group Mr. Lassiter stated that Mr. McMurray of the Machinists would be at the meeting the next day to sign the consent papers for the Metal Trades Council.

Q. Did anything further transpire at that time, that you now recall?

A. There was general discussion about the election, but I don't think it has any bearing.

Q. Did you in this connection again return to the Board's office? A. I did, the next day.

Q. I show you a document which, for the purpose of identification, has been marked Board's Exhibit

(Testimony of G. J. Conway.)

4, and ask you to examine it and state, if you know, what it is.

A. Yes, it is the agreement for a consent election. [867]

Q. Directing your attention to the signature on that document, is that your signature which says, "G. J. Conway"? A. That is.

Q. Do you recall when you signed that document? A. I do.

Q. When was it signed?

A. 1:30 on November 14th—between 1:30 and 2:00 o'clock in the afternoon.

Q. Who else was present at that time?

A. Mr. Rotter for the company, Mr. McMurray of the Machinists' Union, some other gentleman that was with Mr. McMurray, I do not know his name. I was introduced to him, I have forgot his name. And Mrs. Phoenix for the Board.

Q. Now, the document also indicates that there are other signatures there. Were those signatures attached in your presence? A. They were.

Q. Mr. Rotter, is that Mr. Rotter's signature (indicating)?

A. That is the man that signed it, yes, sir.

Q. Likewise for the Metal Trades?

A. That is right.

Q. And Mrs. Phoenix? A. That is right.

Mr. Nicoson: I now offer in evidence Board's Exhibit 4.

Mr. Garrett: One moment. Ruling was reserved on that. [868]

(Testimony of G. J. Conway.)

I had objected on behalf of the unions, parties to the contract, whom I represent, to the reception of that exhibit on the ground that it is incompetent, irrelevant and immaterial; not tending to prove or disprove any of the issues on this case; not tending to prove or disprove any of the issues in this case; not binding on these unions and not relating to any employer with whom these unions, parties to the contract, have or ever have had contractual relations.

I think there were reserved objections to approximately the same effect entered also by the Machinists and by the Painters.

Trial Examiner Kent: The exhibit will be received.

(Thereupon, the document heretofore marked as Board's Exhibit 4, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 4

United States of America
National Labor Relations Board

Case No. 21-R-3101

In the Matter of
O'KEEFE & MERRITT COMPANY

AGREEMENT FOR CONSENT ELECTION

The undersigned Employer (herein called Employer) and the undersigned labor organization(s), subject to the approval of the Regional Director for the National Labor Relations Board (herein called

(Testimony of G. J. Conway.)

the Regional Director and the Board respectively),
Hereby Agree as Follows:

1. Secret Ballot—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

Time and place of election—November 20, 1945-4:30 p.m. to 5:30 p.m. Employee entrance by time clocks

2. The Unit—

All production and maintenance employees excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and patternmaker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

(Testimony of G. J. Conway.)

(herein called the Unit) constitute a unit appropriate for the purposes of collective bargaining.

3. Eligible Voters—The eligible voters shall be those employees included within the Unit, who appear on the Employer's pay roll for the period indicated below, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

Pay-roll period for eligibility—November 4, 1945

4. Names on Ballot—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First United Steelworkers of America, Stove Division Local 1981, C.I.O.

Second Neither

Third Los Angeles Metal Trades Council, A. F. of L.

Fourth

(Testimony of G. J. Conway.)

5. Notices of Election—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

6. Observers—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to an observer designated by each party for such purpose.

7. Objections, Challenges, Reports Thereon—Objections to the conduct of the ballot, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report in-

(Testimony of G. J. Conway.)

clude an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon.

8. Consent Determination of Representatives—The Regional Director shall, if and when appropriate, issue a Consent Determination of Representatives to the parties, setting forth the name of the labor organization which has been designated and selected as the exclusive representative of all the employees in the Unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

9. Run-off Procedure—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall conduct a run-off election at a time and place to be determined by him. Said run-off election shall be in accordance with Article III, Section 11 (b) and (c) of the Board's Rules and Regulations.

O'KEEFE & MERRITT COMPANY,

(Employer).

By /s/ F. F. ROTTER.

(Testimony of G. J. Conway.)

Recommended:

/s/ BERNICE PHOENIX,
BERNICE T. PHOENIX,
Field Examiner National
Labor Relations Board.

Date executed 11-14-45.

Date approved 11-14-45.

/s/ STEWART MEACHAM,
Regional Director National
Labor Relations Board.

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION LOCAL 1981, C.I.O.

(Petitioner)

By /s/ G. J. CONWAY
LOS ANGELES METAL TRADES COUNCIL,
A. F. of L.

By /s/ H. B. McMurry

[Endorsed]: Filed March 13, 1946.

Mr. Garrett: That is in evidence now.

Q. (By Mr. Nicoson): The record in this proceeding indicates that the first session of this hearing was held on March 6, 1946. After that session was concluded did you have a telephone conversation with Mr. Collins? A. I did.

Mr. Garrett: Just a second. Now, on this first meeting at the Board that this witness testified to first, Mr. Nicoson, you have Mrs. Phoenix's memo on that that gives the date. Can you give me that date? [869]

(Testimony of G. J. Conway.)

Mr. Nicoson: November 13th; we established that.

Mr. Garrett: November 13th?

Mr. Nicoson: That is correct.

Mr. Garrett: That is right. November 13th.

Mr. Nicoson: The first one he testified to. Not the one we put the memo in about.

Mr. Garrett: Yes. The date of signature was November 14th?

Mr. Nicoson: That is right.

Mr. Garrett: Now, this conversation you are going to go into now is March 6th; is that correct?

Mr. Nicoson: That is correct.

Mr. Garrett: March 6th?

Mr. Nicoson: March 6th of this year.

Mr. Garrett: 1946.

Mr. Nicoson: The first day of the hearing, after it.

Mr. Garrett: I presume the complaint in this case speaks of its date. I wonder, what was the date of the complaint? Do you have it? The second amended complaint.

Mr. Nicoson: That date of it?

Mr. Garrett: Yes. Do you have a filing date on such things, Mr. Nicoson?

Mr. Nicoson: Well, I can tell you. It was signed on the 20th day of February, 1946. That is shown on the face of the second amended complaint. [870]

Mr. Garrett: Well, I am a little bit at a loss with respect to testimony regarding March 6th, the date after this hearing occurred, the day this hear-

(Testimony of G. J. Conway.)

ing started, and subsequent to the date the complaint was filed.

I don't know whether there will be anything adduced in that conversation that seeks to be binding on my clients, parties to the contract, or not.

Mr. Nicoson: Well, I don't know——

Mr. Garrett: Insofar as it relates to the company, of course, I have no objection. But I will object to anything in a conversation of March 6th, 1946, insofar as it may relate to my clients, as not tending to prove or disprove any of the issues in the complaint. Of course, it couldn't, it is obvious, on account of the date of the complaint. The date of the complaint speaks of events occurring up to the time of its issue. Without a supplemental complaint I don't believe anything testified about it by this witness could go to the issues of the complaint. But I want to make it clear. I make that objection only insofar as anything in this conversation may be sought to be adduced to be binding on my clients. So far as the company is concerned, I don't care what this witness testifies to.

Mr. Nicoson: Well, I don't mind telling you why I have asked this question. It came up between Mr. Collins and me when we were trying to reach a stipulation with respect to [871] generally Mr. Conway's testimony. On this particular phase we were unable to get together, so I told him that I was going to put him on for this purpose, of examining the second and third meetings in the Board's office, and I would ask this question to lay

(Testimony of G. J. Conway.)

the ground work so he could cross the witness on that particular telephone conversation.

Mr. Garrett: That is merely a matter between the C.I.O., the Board and the company, and I take it the parties to the contract——

Mr. Nicoson: I think perhaps it is between the Board and Mr. Collins—yes. I didn't even consult with the C.I.O. about asking these questions.

Mr. Garrett: Nobody was consulted about anything in this conversation that is now about to be related with anyone representing the A.F.L.?

Mr. Nicoson: So far as I know that is true.

Mr. Garrett: I have no objection.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Nicoson): Will you state what you said to Mr. Collins and what Mr. Collins said to you?

A. After I returned to my office I called Mr. Collins at the O'Keefe and Merritt Company, and the girl at the switchboard stated that he was out, but he would call in and she would have him call me.

Mr. Collins then called me that afternoon. I asked Mr. Collins [872] if he would negotiate with the Steelworkers Union the contract we had submitted to them for the employees at O'Keefe and Merritt.

He stated that for the O'Keefe and Merritt employees he was willing to negotiate, but now there was another company, the Pioneer Electric, and he could not negotiate for those employees. [873]

(Testimony of G. J. Conway.)

I said, "Well, if that is the case, then the position of this Union is that we are the certified bargaining agent and we wish to negotiate for all employees." That is all the conversation there was. Mr. Collins, I believe, says, "I will let you know," and I haven't heard from him since.

Mr. Nicoson: That is all. You may cross-examine.

Cross-Examination

By Mr. Collins:

Q. We had substantially the same conversation some time prior to the 6th of March, when we talked on the telephone?

A. We had a lot of them, Mr. Collins. Which one?

Q. Well, sometime after this meeting that you had with me in this cocktail bar at Carl's Cafe, we talked on the telephone after that, too, did we not?

A. I believe once only. I left for Phoenix and when I got back there was a call for me, and I then called you, yes, sir.

Q. And the conversation was substantially the same, was it not?

A. No, it was not.

Q. Well, did you ask me to continue to bargain for the employees at the O'Keefe and Merritt Company?

A. No, you did not—or I did not.

Q. And did I at that time tell you that there was a contract between the Pioneer Electric and the A. F. of L., and I could [874] not bargain for Pioneer's employees, but I could for the O'Keefe and Merritt employees?

A. You did not.

(Testimony of G. J. Conway.)

Q. This conversation you related on the telephone wherein I called you back pursuant to your request, didn't I tell you—didn't you ask me in the conversation would I give the C.I.O. the same contract for the O'Keefe and Merritt employees that the Pioneer Electric had with the A.F.of L.?

A. I did not.

Q. And didn't I tell you that I would have to think that one over, as to whether we would give you the exact same contract or not?

A. You did not.

Q. Didn't I tell you I was not in my office, that I was calling from a public booth?

A. That is right.

Q. And didn't have my contracts with me and the matter was not fresh in my mind?

A. You did not.

Q. I did tell you that I was calling from a public booth?

A. You did.

Mr. Collins: That is all.

Q. (By Mr. Garrett): Mr. Conway, with respect to the first conference you have related occurring November 13, 1945, in this room, when Mrs. Phoenix of the National Labor Relations Board was [875] present, have you now told us all you recollect concerning that conversation?

A. To the best of my ability, yes, sir, but that was not the first meeting. That was the second meeting.

Q. No, that is right. But the first one you have testified about here today.

A. Yes, sir.

(Testimony of G. J. Conway.)

Q. You know the one I mean? A. Yes, sir.

Q. It is the first one you testified to today.

A. Yes, sir.

Q. Which occurred on November 13, 1945, in this room, various other people were present, and Mrs. Phoenix of the Board was here.

A. Yes, sir.

Q. Your testimony is that you now have told us all that you can recollect of that conversation.

A. To the best of my ability, yes, sir.

Mr. Garrett, I am sure that this other gentleman, I can't think of his name, he was with Mr. McMurray of the Machinists Union. He works for the Machinists Union, but I don't recollect his name, and I am sure that he also was at that meeting. I don't know whether I put that into the record or not.

Q. Well, I think you did. [876]

A. I know he was at the second meeting the next day. I don't know whether I stated he was at the first meeting or not.

Q. Well, he was at the first meeting but you don't remember his name?

A. No, I met him the next day, but I don't know his name.

Q. Anything else that you remember about the November 13, 1945, meeting that you have not already told us?

A. No, not that I recollect, sir.

Q. All right. Now, coming to the November

(Testimony of G. J. Conway.)

14th date, when you met here at 1:30 and Mr. Roter, Mr. McMurray and this unidentified gentleman and Mrs. Phoenix were here, have you already told us everything you can recollect about that meeting?

A. To the best of my ability, yes, sir.

Q. You have nothing further to add?

A. No, sir.

Q. Nothing further you can recollect?

A. No, sir.

Mr. Garrett: No further questions.

Mr. Nicoson: Nothing further.

Mr. Tyre: I have one question.

Q. (By Mr. Tyre): Would you state this, Mr. Collins, what was the conversation you had with Mr. Collins when he was calling you from the telephone booth, state what he said [877] and what you said. A. You directed that to Mr. Collins.

Q. I am directing the question to you.

A. You said Mr. Collins. I believe I have already put that in the testimony.

Q. No, you didn't. That is the conversation upon which Mr. Collins was cross-examining you and he asked you certain questions, but I think——

A. Oh, you mean the meeting when I returned from Phoenix, or the time I returned from Phoenix.

Q. That is right.

Mr. Collins: Just a minute. I object to this as not proper redirect. The proceeding will continue interminably if we are going to permit counsel at any time they think of something new just to reopen it.

(Testimony of G. J. Conway.)

Mr. Tyre: This is a matter raised by Mr. Collins on cross-examination.

Mr. Collins: If this is continued cross-examination, I will object to it as not being proper cross-examination of a matter brought out on direct. He never asked about the conversation.

Trial Examiner Kent: You may inquire.

The Witness: Shall I answer that question?

Trial Examiner Kent: Yes.

The Witness: When I returned to the city from Phoenix, [878] there was a call for me from Mr. Collins. I called Mr. Collins and spoke to him in the evening, to the best of my recollection, it was between 5:00 and 6:00 in the evening. I called his office and he was not in, then he called me back, and Mr. Collins stated that he had been trying to get hold of me, and he says, "Jerry," he says, "I wish I had got hold of you first." He says, "I want to deal with you anyway." And he says, "The offer is still open that I made you the other night." He says, "You better think it over." I stated that I could not accept his offer, and that was all the conversation there was. He says, "O.K." and I says "O.K."

Mr. Nicoson: Can we have the time fixed on that, counsel?

Q. (By Mr. Tyre): Can you recall the date, approximately, of that?

A. No, not without contacting my office and checking my calendar.

(Testimony of G. J. Conway.)

Q. Well, was it before or after the election, this Labor Board election?

A. Oh, it was way after that. It was after February 1st, after we had had the meeting in Carl's Restaurant.

Mr. Tyre: That is all.

Mr. Nicoson: No further questions.

Mr. Garrett: No questions. [879]

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Nicoson: Is Mr. O'Keefe here?

Mr. Collins: Not right now. He will come. When do you want him?

Mr. Nicoson: I don't know. Mr. Reed has not examined Mr. Spallino.

Mr. Garrett: There was further cross of Spallino. I have had him.

Mr. Nicoson: Do you have any, Mr. Reed?

Mr. Reed: No, I have no cross-examination of Mr. Spallino.

Mr. Nicoson: Then, I guess we are about back to redirect, then.

Mr. Garrett: That is right. You recall Mr. Schullman was offered cross-examination yesterday and made a motion instead.

Mr. Nicoson: Mr. Spallino, will you please take the stand.

CHARLES SPALLINO,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect Examination

By Mr. Nicoson:

Q. You are the same Charles Spallino who [880] previously testified in this hearing, are you not?

A. Yes, I am.

Q. I believe you said during the course of your examination, either on cross or direct, you served as an observer at the election which it has been stipulated was held on November 20, 1945, at O'Keefe and Merritt, is that correct?

A. I did.

Mr. Garrett: Lest it be said my interposition is not timely, may I inquire the purpose of recalling Mr. Spallino at this time?

Mr. Nicoson: Mr. Spallino is now recalled on redirect.

Mr. Garrett: Redirect. Thank you.

Mr. Nicoson: Mark this the next in order.

(The document referred to was marked as Board's Exhibit No. 11 for identification.)

Q. (By Mr. Nicoson): I hand you a document which, for the purpose of identification has been marked Board's Exhibit 11, and ask you to examine and state if you know what it is.

Mr. Garrett: Objected to as not proper direct.

Mr. Nicoson: Well, I laid the foundation for it, I think.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Objection overruled. The answer may be taken.

The Witness: What is the question, please?

Q. (By Mr. Nicoson): Do you know what that document is? [881] A. Yes.

Q. What is it?

A. This is a certificate that I signed when we got through with the election at O'Keefe and Merritt.

Q. Was that signed in your capacity as an observer of the election? A. Yes, it was.

Q. Is that your signature on there?

A. This is my signature right here.

Q. These other signatures were attached in your presence?

A. I don't recall. I am sure that these people here may have signed——

Q. You are pointing to these people, but the record won't show to whom you are pointing. Will you read them?

A. I am not so sure that Louie Ortega was ahead of me. I think these signatures were on there.

Mr. Nicoson: What did he say?

(The answer was read.)

The Witness: I don't remember now whether the C.I.O. or the A.F.of L. signed first.

Q. (By Mr. Nicoson): Well, were they signed at or about the same time? A. Yes.

Q. At the conclusion of the election?

A. At the conclusion. [882]

(Testimony of Charles Spallino.)

Mr. Garrett: I wonder, will you take a look at the proffered exhibit, your Honor. The direction of this examination is now apparent, your Honor, and I have not had a ruling yet on my objection that it is not proper redirect. I will make the further objection——

Trial Examiner Kent: I thought I ruled on that.

Mr. Garrett: Of course, you didn't know what the examination was going to be. I stated I merely interposed it at that time so that Mr. Nicoson would not claim again that my objection was not timely. I didn't know what he was going to call this man about and put him on for. The man, however, has been called and has been cross-examined.

This certification doesn't go to any matter that was raised either on direct or cross. This man can't be used to prove the result of an election. That is not the best evidence.

No offer is made showing the purpose of this testimony or the relevancy of this document. Is it intended to prove, by the fact this man put his signature on the document, the election is fair? If so, that is not the way to prove it. Is the fact the election was fair a proper or essential or material thing for the Board to prove? I don't think so.

Trial Examiner Kent: Of course, there is prior testimony in the record that he was present and served as an observer. [883]

Mr. Garrett: That is correct.

Trial Examiner Kent: At the election?

(Testimony of Charles Spallino.)

Mr. Garrett: That is correct. But what of it? What possible argument is there for the materiality of this document? I would like to hear what reason the Board has for trying to put it in, except possibly that they intend to prejudice somebody by reason of the fact that this man has signed his name in two places, one as an observer for the company and one as an observer for the Los Angeles Metal Trades Council.

Trial Examiner Kent: Another purpose might be the proceedings in connection with the election were regular, I suppose, in accordance with Board's general rules. That would be one purpose. There also might be others.

Mr. Garrett: Is it material for the Board to prove that? What bearing has the election in the O'Keefe and Merritt case, anyhow, upon the issues here? The Board has made a certification. It made a certification——

Trial Examiner Kent: Yes, I think it is material. I think it is clearly material to the issues.

Mr. Garrett: On what theory? I will bet the Board can't state any theory on which it is material. I assign this as misconduct, an attempt to prejudice these unions, parties to the contract, by placing before the Board in evidence a document which is obviously ambiguous on its face, and which is offered for no other reason than to prejudice these parties to the contract.

There is only one reason why this document should ever have been offered, and there is only one

(Testimony of Charles Spallino.)

reason why it is offered, and that is because it bears Mr. Spallino's name twice, once as observer for the company and once as observer for the Los Angeles Metal Trades Council.

Mr. Nicoson: Of course, I will call counsel's attention to the fact he is interposing these objections before I have had an opportunity to complete the foundation questions with respect to this document. Also, I haven't offered it yet. I don't mind telling him that as the complaint, I think, clearly shows—as we intend to prove—that Board certification was made down there over a group of employees who it is alleged have now become Pioneer Electric employees.

I don't think it is any secret in this hearing that, as counsel himself has phrased it, the Pioneer Electric is the alter ego of O'Keefe and Merritt. There are also decisions of the Board which show, even in the absence of such a showing as the alter ego, if the board has made a certification over a group of employees, that certification thereafter can't be evaded by a change in ownership.

That is not only sustained by decisions of the Board, but also sustained by one decision that comes to my mind by the Sixth Circuit in the Kitty Kover case, or Colton case. [885]

I submit it is entirely relevant and entirely material to this issue to show the entire line of the events leading up to the election, who was involved, who participated, and what capacity they participated in, leading up to, as I will prove, the certification

(Testimony of Charles Spallino.)

covering those employees down there on a unit which these people here, among whom are some represented by Mr. Garrett, that came in and signed, a consent election and asked us to come down and hold an election; and we did. I propose to show exactly what went on down there at the election.

Mr. Garrett: I want to first say I don't agree with any of the conclusions Mr. Nicoson has expressed as to what he proved or what the Board did. The Board will decide that.

Mr. Nicoson: I suppose that is obvious or else he wouldn't be here.

Mr. Garrett: It is now obvious, also that Mr. Nicoson is trying to prove, by recalling this witness, an essential portion of his case, to wit, who was covered by a determination of representatives by this Regional Board.

All of the best evidence as to that, as to who is represented to be the employer, what payrolls were called for, what payrolls were used, what determination as to eligibility there was, all of that information reposes in the files of the Twenty First Regional Board. It is held by them as private and not public records. It is inaccessible [886] to me, but not to Mr. Nicoson.

Mr. Nicoson: I don't think that is a true statement, that he has ever been denied a right to look at the poll list at that election down there. The only thing I have told him that I would not permit him to see, and I couldn't under any circumstances show

(Testimony of Charles Spallino.)

him, were the cards submitted to us by the labor organization.

I further state I wouldn't even show him the cards submitted to us by the A. F. of L., if they still happen to be in our hands; of which there were many.

I do have the payroll list here. I have no objection to his looking at it. As a matter of fact, I propose to enter it as an exhibit in this hearing.

Trial Examiner Kent: Yes, I assumed that was coming in in due time, either by being presented by the Board or the company as part of the case. I don't think you are prejudiced. You might proceed.

Mr. Garrett: Can your Honor see any theory upon which this evidence can be material, when the Board sets up a man, obviously a man whose credibility is open to the most serious question on all sides, to set up and testify as second-hand—I should say not only the best evidence, but as the worst conceivable evidence, to testify as to matters which are implicit in the records of the Board itself. It seems to me the Board may be trying to conceal something.

Mr. Nicoson: Your Honor, that is what I am trying to do, is put in here the records of the Board, the official records of the Board.

Ordinarily, in case after case in which I have participated, we didn't even bother with these objections, because the official records, of which the Board will take judicial knowledge, whether Mr. Garrett objects or Mr. Collins objects or I object, or anybody objects. These are official public records

(Testimony of Charles Spallino.)

of the National Labor Relations Board. It can take judicial knowledge if they weren't even in this record. I think we are wasting a whole lot of time about these official records as part of the public file. All of these parties have had copies of these documents. There isn't anything secret about it. They were served on the company. They were served on the Los Angeles Metal Trades Council, they were served on the C.I.O.

Mr. Garrett: I don't represent the Los Angeles Metal Trades Council.

Mr. Nicoson: They were the party to this election down there. I don't care who you represent. I am just telling you what the official records show, and I propose to put the official records in here.

Trial Examiner Kent: You might proceed.

Mr. Tyre: Mr. Examiner, I would like to make one other statement as to a possible purpose of this examination. Mr. Garrett, on the fifth day of this hearing, just prior to the noon recess, in cross-examination of Mr. Spallino, asked him whether or not he was an observer for the Stove Mounters' Union at the election.

Mr. Nicoson: Exactly correct.

Mr. Tyre: And I think this witness now has the right on redirect examination to clarify any ambiguities that are left by that line of examination by Mr. Garrett.

Mr. Garrett: What date was that?

Mr. Tyre: That was the fifth actual day of hear-

(Testimony of Charles Spallino.)

ing, including the first day we asked for a continuance.

Trial Examiner Kent: That would have been yesterday.

Mr. Tyre: No, it wouldn't have been yesterday.

Trial Examiner Kent: No.

Mr. Tyre: It would have been on Friday.

Mr. Collins: Has there been a ruling?

Mr. Nicoson: There have been two or three rulings to go ahead.

Trial Examiner Kent: Yes. I will overrule the objections and let counsel proceed.

Mr. Garrett: Since the statement has been made I asked a certain question of this witness, I ask the consent of the [889] Board to let me review my notes, so I may either concede or deny the statement made by Mr. Tyre.

Mr. Nicoson: On page 606, in the cross-examination by Mr. Garrett: Let the record show I am showing Mr. Garrett a copy.

Mr. Garrett: That is right. You read it.

Mr. Nicoson: I wish you would read it.

Mr. Garrett: Where do you want me to read?

Mr. Nicoson: Here (indicating).

Mr. Garrett: This is the evidence to which Mr. Nicoson refers on page 606. I asked the question:

“At the election you say you acted as an observer for the Stove Mounters?

“A. Yes; forcibly.

“Q. Well, now, just what do you mean?

“A. I had refused it. On the last minute

(Testimony of Charles Spallino.)

Roberts and one of the government agents there came and told me, said, 'You are going to be an observer'.

"I said, 'I told you I didn't want to be an observer'.

"They pinned a button me and gave me a list of names to check.

"Q. Were you the only observer for the A.F.L. at that election? A. No, sir.

"Q. Who else was observer for A.F.L.?

"A. I don't remember who they all were. One, that was alongside of me, McNitch or Mac something, a fellow in the machine shop. I don't remember his name.

"Mr. Nicoson: I think, if it is important, counsel, the official records of the Board will indicate who the other observer was.

"Q. (By Mr. Garrett): You were the one then who had to decide whether any votes would be challenged for——

"A. No, I didn't challenge any votes. All I did was keep the chart, the list of names, to check, they voted or not.

"Q. You didn't make any challenges; is that right? A. I did not."

Then recess.

Trial Examiner Kent: You may proceed.

Mr. Garrett: I take it you are overruling my objection?

Trial Examiner Kent: The objection is overruled, yes.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): You still have before you the document which has been marked for identification as Board's Exhibit 11. I will ask you to state, if you know, did any of the other persons whose names appear there act in the capacity of observer in the election at that time.

A. Yes; Levascos.

Q. Any of the others you know of?

A. And Louie Ortega and Leonard. He was for the C.I.O. [891] And so was Louie Ortega. And McNinch. I remember now he was for O'Keefe. He was at my table.

Q. Was he helping you with the checking, is that your story? A. Yes.

Q. And who helped you with the checking?

A. Louie Ortega sat on one side of me. He did the challenging for the C.I.O.

Mr. Garrett: May I have a continuing objection to this line of questioning? It is not binding on these unions, parties to the contract.

Trial Examiner Kent: The objection may go to the line, yes.

Mr. Collins: I should like to interpose a continuing objection on behalf of the Pioneer Electric Company.

Mr. Garrett: I take it, your Honor recognizes I have as grounds for my objection also that this is not proper redirect and that it is immaterial.

Trial Examiner Kent: I believe you so stated, yes.

Mr. Garrett: The first time.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Yes.

Q. (By Mr. Nicoson): Had you finished your last answer?

A. At my table there was Louie Ortega for the C.I.O. and McNinch for the company.

Q. What were you doing at your table? [892]

A. I was checking the name list.

Mr. Nicoson: I now offer in evidence Board's Exhibit 11.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial; not binding on these unions; not having any bearing on any of the issues in this case; not the best evidence.

Trial Examiner Kent: That is your signature on the document?

The Witness: That is, yes.

Trial Examiner Kent: Did you see the other gentlemen sign?

The Witness: Well, it was passed among us.

Trial Examiner Kent: At the time?

The Witness: Every one signed, yes.

Trial Examiner Kent: You saw them sign?

A. I saw Johnnie Levascos sign and I saw Mr. Ortega sign. I saw all the others sign.

Mr. Garrett: May I have the witness on voir dire?

Mr. Nicoson: Wait a minute. I think it is a little late for that. I think we have wasted enough time on it.

Mr. Garrett: I would just as soon take it on cross.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I think you can take it on cross-examination. The exhibit may be permitted.

Mr. Garrett: Will the objection not be raised the questions I raise on cross are properly voir dire, before the admission of the document? [893]

Mr. Nicoson: I don't know what he means by that.

Mr. Garrett: My questioning to the execution of the document itself, Mr. Nicoson.

Mr. Nicoson: You mean as to the signing of that document?

Mr. Garrett: Yes. Those questions that ought to be raised on voir dire.

Mr. Nicoson: All right.

Trial Examiner Kent: I will reserve my ruling and let you examine at this time.

Voir Dire Examination

By Mr. Garrett:

Q. You have the original Board's Exhibit 10 before you; have you?

Mr. Nicoson: Board's Exhibit 11.

Q. (By Mr. Garrett): Board's Exhibit 11. Take a look at it, Mr. Spallino. A. Yes.

Q. You notice your name appears there twice.

A. It was a mistake by signing on the wrong side.

Q. Is that your handwriting in both places?

A. It is on both.

Q. The first place you signed, the place at the

(Testimony of Charles Spallino.)

top, you will notice a line through your signature there.

A. That is right.

Q. Do you know who put that line through there? [894]

A. No.

Q. Did you put it through there?

A. I am not sure. Mrs. Phoenix said, "That is the wrong place to sign." I am not sure.

Q. Just a minute. The last time you saw this document before you, Board's Exhibit 11, are you willing to state that at that time, on the day of the election, the last time you saw this document, which is Board's Exhibit 11, there was a line through your signature?

A. I don't remember seeing the line on the signature.

Q. As a matter of fact, you don't remember seeing any line through that signature until the document——

A. Until now.

Q. Until the document was presented here today?

A. That is right.

Mr. Garrett: That is all.

Mr. Nicoson: Now it is offered again.

Trial Examiner Kent: It may be admitted.

(Thereupon, Board's Exhibit 11, heretofore marked for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 11
United States of America
National Labor Relations Board
CERTIFICATION ON CONDUCT OF
ELECTION

Name of employer, O'Keefe & Merritt Company.

Case No. 21-R-3101.

Date of election Nov. 20, 1945.

Place, Los Angeles, California.

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

We Hereby Certify that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For O'Keefe & Merritt Company,

/s/ ~~CHARLIE SPALLINO,~~

/s/ C. S. McNINCH,

/s/ CHARLES McARTHUR.

For the Regional Director, 21st Region,

/s/ BERNICE T. PHOENIX,

/s/ MARTIN ZINING.

For United Steelworkers of America, Stove Division Local 1981, C.I.O.,

/s/ LOUIS F. ORTEGA,

/s/ DEWARD LEONARD.

For Los Angeles Metal Trades Council, A.F.L.,

/s/ CHARLIE SPALLINO,

/s/ JOHN LEVASCO.

[Endorsed]: Filed March 20, 1946.

(Testimony of Charles Spallino.)

Mr. Nicoson: I ask permission at this time——

Mr. Garrett: On its face it contains an obvious alteration that isn't explained.

Mr. Nicoson: I ask permission at this time, if your Honor please, to substitute true copies of this document and [895] withdraw the original.

Mr. Garrett: That is one stipulation I can't make.

Mr. Nicoson: I didn't ask you to stipulate. I asked permission of the Trial Examiner.

Mr. Garrett: I insist that the original document be left in the record. The alteration on that document is an important element in our case.

Mr. Nicoson: The copy showed——

Trial Examiner Kent: Do you contend, Mr. Garrett, that the two signatures purporting to be on the document as signed by Spallino are not identical?

Mr. Garrett: I contend that they are identical and that the document shows on its face that the election is irregular, that this observer was acting for the company while purporting to act for the A. F. of L. unions. They were denied their proper protection in the election.

Mr. Nicoson: That is about the most frivolous objection I have ever heard.

Trial Examiner Kent: I can't see that then materiality of the actual signatures, if you do not dispute that the two signatures on that document which are purportedly signatures of Mr. Spallino are not the same, and you apparently admit that they are.

(Testimony of Charles Spallino.)

Mr. Garrett: You recall, if your Honor please, that the record shows that this man was asked, according to his [896] testimony, to act as an observer, not only by Mr. Roberts but by an official of the N.L.R.B. The official of the N.L.R.B. had an obligation to the A. F. of L. unions to see that they had an observer there, providing that official interposed, and the obligation was an observer who would represent them and not the company. This original document shows that this man was there and regarded himself there as the representative of the company and not of the A. F. of L. union. As far as I know, the election may have been rigged on that alone.

Trial Examiner Kent: I think the record is clear on that.

Mr. Garrett: I do not expect your Honor to agree with me in all cases, but I expect your Honor to give me a record that I can argue before the Board back in Washington, and I contend there should be inclusion of that original document rather than a copy in the record, that this particular sheet is essential to my case, and I am being denied my material rights if a copy rather than that original goes back there.

Mr. Collins: In that respect I join in Mr. Garrett's objection.

Mr. Nicoson: If that is what the situation demands, I haven't anything up my sleeve. I will let the original go in. [897]

(Testimony of Charles Spallino.)

Mr. Garrett: I don't object—I mean I am not screaming about the court's ruling on my objection, courts have been ruling against me for 25 years a whole lot oftener than with me, but I have a right to my record.

Mr. Nicoson: I am certainly not surprised, considering the frivolousness of your objections. Let the record show that the original document goes in.

Mr. Garrett: I thank you, Mr. Nicoson. I thank you for your fairness.

Mr. Tyre: I think the record should also show that the copies that have been served upon us have a typographical error. The copies show——

Mr. Nicoson: The original is in now, so I don't want——

Mr. Tyre: I don't want counsel to argue about the copies in their briefs.

Mr. Nicoson: The copies that have been furnished you are not in evidence. The original is there. As far as I know the copies never existed.

Mr. Tyre: All parties have seen the copies, and the typographical error is on the copy, Charlie instead of Charles.

Mr. Nicoson: Mark this next.

(Thereupon, the document referred to was marked as Board's Exhibit No. 12, for identification.)

Q. (By Mr. Nicoson): I now hand you a document, Mr. Spallino, consisting of 9 sheets of paper, and ask you to [898] look at it, examine it, and state if you know what it is.

(Testimony of Charles Spallino.)

Mr. Garrett: May I have an understanding with counsel that if I object on the ground that it is not proper redirect after I myself have been shown the paper, the objection will not be made that my objection is not timely?

Trial Examiner Kent: I won't rule until the exhibit—the exhibit has not been offered yet, anyway. You will have an opportunity to make your objection.

Mr. Garrett: I don't want to interfere with the foundation, but I want to preserve my right to object.

Trial Examiner Kent: Oh, yes, you will have an opportunity to examine the document before it is received.

The Witness: What I have here is the list of names and this is with the blue chalk here, pretty sure is the one that I had, the list to check on my line. There were two lines formed there for election, and I am pretty sure that this is the copy that I went through.

Q. (By Mr. Nicoson): What do you mean you went through?

A. Well, to check off the names as they came by.

Q. Where?

A. The voting booth. There was a table there and they all had to pass, they had an alphabetic there, a certain number, I don't recall the numbers on one side and certain numbers on another line, and I am pretty sure this is the list I had to take

(Testimony of Charles Spallino.)

care of with the blue pencil, I checked them off as they [899] came by.

Q. In other words, you checked off the names of the voters as they presented themselves?

A. Yes.

Q. They were given to you and you checked them off of this list?

A. I checked them off of this list as they came by.

Q. This is the list that you had, is that correct?

A. Yes.

Q. And these blue marks were put on here by you? A. Yes.

Q. What do those blue marks indicate?

A. Indicate that they came by to vote, they were eligible. In fact, I have one here that I marked challenged.

Q. What does that indicate?

A. Oh, I just put. He was challenged. He was a straw boss or something or other.

Q. In other words, so that I may have you clear, those where the blue marks appear——

A. Those are my blue marks.

Q. ——presented themselves to vote at the election in your particular line?

A. Yes, in my particular line, yes, sir.

Q. The balance of this document, it is your testimony that you did not have anything to do with? [900]

A. I didn't have anything to do with that line there.

(Testimony of Charles Spallino.)

Mr. Nicoson: I will modify my offer then to make Board's Exhibit 12 a document of only four sheets which are attached together by a paper clip. I show that to counsel and offer it in the record. I offer Board's Exhibit 12 in evidence.

Mr. Garrett: Objected to. No proper foundation laid, objected to as not the best evidence, objected to as not tending to prove or disprove any of the issues in this case, objected to as not relating to any matter between these unions parties to the contract and any employer with whom they have ever had or have contractual obligations, objected to as not proper redirect.

Mr. Collins: I object to the introduction of this in evidence upon the ground it is not proper redirect examination, upon the further ground it does not tend to prove or disprove anything in issue, so far as the case of the Pioneer Electric Company is concerned. This list does not purport to be, my understanding of its identification, the payroll of the Pioneer Electric Company. It purports to be——

Trial Examiner Kent: Well, it is my understanding, Mr. Collins, I am sure that the witness' testimony is clear on that point, that this is a payroll submitted by the company for the purpose of checking the ballot at this particular election, was it not? [901]

Mr. Collins: Frankly I don't know what it is, Mr. Trial Examiner. I have never seen it before.

(Testimony of Charles Spallino.)

I presume that is what it is, the payroll of the O'Keefe and Merritt Company, but what that can possibly tend to prove so far as the Pioneer Electric Company is concerned or the Pacific Cast Iron Pipe Company or any other company is very far afield.

The Witness: Where was the Pioneer Electric at that time?

Trial Examiner Kent: Never mind that.

Mr. Collins: May this answer be stricken? Just a moment.

Mr. Garrett: May I have the last answer read first?

Trial Examiner Kent: Read the answer, Mr. Reporter. Well, it was not an answer. It was a remark of the witness.

(The witness' remark read.)

Trial Examiner Kent: I believe that you asked to have that stricken, Mr. Collins?

Mr. Collins: I think I will leave that in there.

Mr. Garrett: I have no objection.

Trial Examiner Kent: What?

Mr. Collins: I think I will leave it in there.

Mr. Nicoson: As far as I am concerned it can stay in or go out. It was just a voluntary statement of the witness.

Mr. Garrett: I want it to stay in. I think it tends to show the state of mind of this witness.

Mr. Nicoson: Now, is there a ruling on this exhibit?

Trial Examiner Kent: I am not sure, does it

(Testimony of Charles Spallino.)

appear or doesn't it appear that it was submitted to the observers as the payroll to constitute the poll list at the election.

Mr. Garrett: It does not, your Honor, and there can be no such testimony from this witness.

Mr. Nicoson: It is agreed this is the list that he used to check with the voters down there.

Mr. Garrett: If that is a proper foundation, I don't know anything about foundations.

Mr. Nicoson: I will ask you one further question.

Q. (By Mr. Nicoson): You say Mr. McNinch was working with you at your table?

A. Yes, he was the observer for O'Keefe and Merritt.

Q. Did he also——

A. He went over the list with me, yes.

Q. As the men came up? A. Yes.

Q. And you did the markings, is that correct?

A. Yes.

Q. Is that true as to the—what C.I.O. observer was there? A. Mr. Ortega.

Q. Did he also do the same thing?

A. Yes. He did the challenging.

Trial Examiner Kent: I think I will reserve ruling until [903] it is shown that it was the payroll which was a list of names on the payroll submitted by the company on which the poll was taken. Mr. Collins made a sort of a half admission on that, but he qualified it further by stating that he was not sure. Of course I think it is obvious that is

(Testimony of Charles Spallino.)

what it was, but I am dubious that the record actually shows that.

Mr. Nicoson: Very well. Will you bear with me just a minute?

Trial Examiner Kent: Very well.

Mr. Nicoson: If your Honor please, it is about 11:00 o'clock. Do you want to take a short recess?

Trial Examiner Kent: Yes, you might take a 5-minute recess.

(Short recess taken.)

Trial Examiner Kent: You might proceed.

Q. (By Mr. Nicoson): At the time you acted as observer at the election, Mr. Spallino, did Mrs. Phoenix say you had to serve as the observer?

A. No.

Mr. Garrett: Wait a minute. Is that answer no?

Mr. Nicoson: Yes, the answer is no.

Mr. Garrett: Is that answer in the record?

Trial Examiner Kent: Yes.

Mr. Garrett: May it go off for the purpose of my objection, merely for the purpose of the objection? [904]

Trial Examiner Kent: Yes, you may. I will reserve the ruling.

Mr. Garrett: We want to object to that, of course, as being hearsay and not binding upon any party to the action.

Mr. Nicoson: I submit I have got a right to clear up his testimony.

Mr. Garrett: That was just about as leading

(Testimony of Charles Spallino.)

as any question that has ever been propounded to any witness.

Mr. Collins: I move that the question be stricken upon the ground that it calls for hearsay and that it is leading and calls for the answer, further, it is an attempt to impeach the witness. We have other testimony here where he said they made him do it.

The Witness: Mr. Roberts——

Mr. Collins: Just a minute.

Trial Examiner Kent: Never mind now.

Mr. Nicoson: I certainly have a right to rehabilitate this witness on redirect. That is the purpose of redirect, if counsel doesn't know.

Trial Examiner Kent: I think it is probably objectionable upon the ground it is leading. Reframe it.

Mr. Collins: There is no way in the world to reframe it. Mr. Trial Examiner, I submit this is an attempt to impeach the witness' testimony. He said before that he was forced into it, now he is saying that he was not forced into it. [905] It is not rehabilitating the witness, that is absolutely changing the record in this case.

Mr. Garrett: Our objection is sustained. I think it is perfectly proper for him to continue and we can object to the next question and get a ruling. I think that is the orderly way to proceed.

Trial Examiner Kent: I think counsel can properly ask what Mrs. Phoenix said at the time.

Mr. Garrett: Is that your ruling, your Honor?

(Testimony of Charles Spallino.)

Trial Examiner Kent: I sustained the objection to the present question in that regard.

Mr. Garrett: Merely to the form of the question?

Trial Examiner Kent: Yes, on the form.

Q. (By Mr. Nicoson): Did Mrs. Phoenix say anything to you with respect to serving as an observer down there, Mr. Spallino?

Mr. Garrett: Just a moment. Objected to as calling for hearsay.

Trial Examiner Kent: Well, as to that, I will restrict the answer to yes or no. I think it is a preliminary question.

Mr. Garrett: No objection.

Mr. Nicoson: Will you answer, Mr. Spallino?

The Witness: When she first met she didn't know who I was. [906]

Q. (By Mr. Nicoson): Did she say anything to you, Charles, at any time down there?

A. Well, the only time that——

Q. Did she, yes or no. A. No.

Q. Did any of the other Board agents down there say anything to you with respect to acting as observer? A. No.

Mr. Garrett: Now, just a moment. May the answer go out for the purpose of the objection?

Trial Examiner Kent: I think it is a preliminary question. The answer is no.

Mr. Garrett: It is not preliminary, if your Honor please, and it is now apparent, it is now apparent, it is now apparent that although it may have

(Testimony of Charles Spallino.)

seemed to the Trial Examiner, and I must confess I too was deluded, that the question is not a preliminary question. The question is asked only to bring out evidence by the answer to the question, and the question alone, bearing on an essential element in this case, to wit, the manner of the selection of this man as an observer and who he was selected for by the Board.

Mr. Nicoson: I don't mind telling you I was as much surprised by the answer of the witness as the rest of the people around here. It is the general practice for the Board agents to talk to the observers and tell them what [907] their duties are and all that sort of stuff.

Trial Examiner Kent: I would assume so.

The Witness: May I have the story just the way——

Trial Examiner Kent: Never mind now.

Mr. Nicoson: Wait just a minute. You answer the questions put to you.

Mr. Garrett: Objected to as calling for hearsay, not binding on these parties, not proper cross-examination.

Trial Examiner Kent: Objection overruled on that ground.

Mr. Nicoson: Read the question.

(Question and answer read.)

Q. (By Mr. Nicoson): Now, on page 415 of the record you were being questioned by Mr. Collins and you were asked with respect to Joseph Spallino. He was the plant superintendent of the Pioneer Electric

(Testimony of Charles Spallino.)

Company, was he not, during the war? Do you recall that? A. He was.

Q. Your answer to that, he was. I will ask you if you know what position Joe Spallino held, if any, prior to the war.

A. He was an assistant to Bill O'Keefe before the war at O'Keefe and Merritt.

Q. And I will ask you with respect to immediately after V-J Day, do you know what position Joe Spallino had?

A. Well, he was transferred back to O'Keefe and Merritt. [908]

Q. As what? A. As a superintendent.

Mr. Collins: All of which testimony I now move to strike on the ground it is a conclusion of the witness. What capacity any individual had at the time at O'Keefe and Merritt Company is entirely beyond the ability of this witness to testify to. It calls for a conclusion of someone, and this witness is obviously not the one to make that conclusion. He is only an employee.

The Witness: And Joe Spallino is my brother.

Mr. Nicoson: I submit that the employees of the factory know who their bosses are, particularly a plant superintendent. They may never have been up in the big boss' office and seen the papers which made him a plant superintendent, or they may not have been present at the time the big boss says, Joe, you are it, or Sam, you are it, but they work with him day in and day out, they know his capacity.

(Testimony of Charles Spallino.)

Certainly it is a matter of common knowledge to which any employee in the plant can testify.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): Now, at page 438 of the record you were being questioned by Mr. Collins with respect to an argument or discussion that you had with your brother Joe Spallino just prior to going into Mr. Collins' office. You testified to the question, I think you testified that [909] I asked you what the trouble was, is that true?

"A. No, you wanted to know why he was arguing with me.

"Q. I am just asking my question, did I ask you what was the trouble? Is that true, did I say that to you? A. No."

My question now, Mr. Spallino, is what were you talking with Joe Spallino about immediately before going to Collins' office at that time?

Mr. Garrett: Wait a minute. Objected to as calling for hearsay, not binding on any of the parties to the contract.

Mr. Collins: Same objection.

Trial Examiner Kent: Objection overruled. The answer may be taken.

Mr. Garrett: Objected to, no proper foundation.

Mr. Nicoson: Will you read the question?

(Question read.)

A. At what time was that?

Q. (By Mr. Nicoson): I think the record indicates this is the first time you testified about going to Mr. Collins' office back in some date about two

(Testimony of Charles Spallino.)

years ago in one place, and 1942 some place in there.

Do you remember that occasion? A. Yes.

Q. All right.

A. Well, Joe Spallino had told me—— [910]

Mr. Garrett: Could I get a ruling on my objection that there is no proper foundation? In other words, to make my objection clear, I recall testimony as to a conversation that took place in Collins' office where the witness and his brother and Collins were present. I cross-examined at length on that. I thought the testimony on direct was not binding on us, but I conceded that a foundation was laid as to the fact, but I don't recall any foundation for any other conversation taking place at about that time except the one inside the office.

Trial Examiner Kent: Well, the record shows that Joe Spallino was a superintendent for O'Keefe and Merritt prior to the war, then became the superintendent for the partnership during the war, and is now back in O'Keefe and Merritt.

Mr. Collins: Mr. Trial Examiner, I submit that is not the record. The allegation is that Joe Spallino was assistant to Bill O'Keefe, who was the superintendent for O'Keefe and Merritt Company.

Trial Examiner Kent: I understand. That is the testimony.

Mr. Collins: And I think if I am permitted to examine even this witness he will also testify that O'Keefe had other assistants besides Joe Spallino before the war.

(Testimony of Charles Spallino.)

Mr. Garrett: That is not what I am directing my objection to. I am directing my objection to the lack of foundation [911] for this conversation which apparently took place on the same day as the conversation which was related, in Collins' office. I don't know who was there.

Mr. Nicoson: This is not in Collins' office.

Trial Examiner Kent: Your objection is proper. Reframe the question.

Mr. Nicoson: I must remind your Honor this is redirect examination and I can go into these matters brought out on cross-examination without all this folderol.

Trial Examiner Kent: Yes, but of course——

Mr. Nicoson: I will reframe the question.

Q. (By Mr. Nicoson): Did you have a conversation with Mr. Joseph Spallino just prior to going to Mr. Collins' office back at that time?

A. Yes.

Q. What did you say to him and what did he say to you?

Mr. Collins: Objected to——

Trial Examiner Kent: Who else was present, if anyone?

The Witness: There was Joe Spallino.

Q. (By Mr. Nicoson): Just the two of you?

A. Yes.

Mr. Collins: Objected to as no foundation having been laid.

Trial Examiner Kent: The answer may be taken. The objection is overruled. [912]

(Testimony of Charles Spallino.)

The Witness: At that time Joe Spallino was working for Pioneer Electric.

Q. (By Mr. Nicoson): Never mind that. What did he say to you and what did you say to him? Pay attention to the questions.

A. He says that he has been called by Collins and by Bill O'Keefe, they have been after him to find out why I went to the C.I.O. meeting. They want to see me up there now.

He said, "Please, for my sake, get out of this mess of going to these C.I.O. meetings, and things like that." He says, "They are after me." They are calling him. They called him two or three times and finally we walked up to Collins' office, and that is what took place at Collins' office. Bill O'Keefe and Collins were there.

Q. I didn't ask you what happened in there. I am just asking what you and Joe talked about before you got there. Now you stated, in answer to Mr. Collins' question on page 441, he asked you: "Did you at any time sign up with the A.F.L.?" Your answer to that was, "Yes, Johnnie Levascos came up to me and I signed."

Where were you when Johnnie Levascos came up to you and you signed?

A. I was near the superintendent's office there, somewhere-about there. I was either going or coming from the lunch stand. [913]

Q. Was that during working hours or off working hours?

A. That was during working hours.

(Testimony of Charles Spallino.)

Q. On page 500 of the record you were being questioned by Mr. Garrett. The question was put this way:

“Let me put it this way: How did it come about, in the first instance, while the plant was being picketed by the A.F.of L. that this Five and Over Club established a grievance committee and started to adjust grievances with management? How did it come about?

“A. Well, I guess on the appearance that the union was out there trying to organize the place, that suggested this. The ruling power of O’Keefe and Merritt suggested that we form a committee reporting to Bill O’Keefe, was the fellow we reported our grievance to for quite a while, so that would come into a big story.”

Who did you refer to there by “the ruling power” of O’Keefe and Merritt?

Mr. Collins: Objected to as it calls for the rank-est kind of hearsay.

Trial Examiner Kent: The answer may be taken.

The Witness: Collins always made the plans and suggestions for the different—well, organizations in the plant there, all politics and everything. It all came from his office.

Mr. Collins: I move it be stricken on the ground it is [914] a conclusion of the witness.

Q. (By Mr. Nicoson): Do you understand the question, Mr. Spallino?

(Testimony of Charles Spallino.)

Trial Examiner Kent: It may be stricken.

The Witness: The ruling——

Q. (By Mr. Nicoson): Do you understand the question? A. Well, the way I understand——

Q. Do you? Yes or no. A. Not truly.

Mr. Nicoson: Will you read him the question, please?

Mr. Garrett: The objection was sustained.

Mr. Collins: The answer was stricken, counsel.

Mr. Nicoson: Did you sustain the objection?

Trial Examiner Kent: No, I struck the answer.

Mr. Nicoson: What is your ruling on the objection, then?

Trial Examiner Kent: Read the question. My ruling was that the answer might be taken, I was quite positive. Read the record.

Mr. Nicoson: That is what I thought.

(The record was read.)

Mr. Collins: Objected to as it calls for the rankest kind of hearsay and a conclusion of the witness.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: I submit that the ruling power of O'Keefe [915] and Merritt Company would be the stockholders or president or some duly authorized official.

Mr. Nicoson: It certainly wouldn't be improper to have this record show to what persons, if any, he was referring when he used the term "ruling power" of O'Keefe and Merritt.

Trial Examiner Kent: No. I think your objec-

(Testimony of Charles Spallino.)

tion could be well covered by argument, in the event——

Mr. Nicoson: That is all I want to know. He asked the question and he got that answer. I want to clean it up.

Q. (By Mr. Nicoson): Who did you refer to as “the ruling power” when you made that answer?

A. Well, the ruling power, the way it works, I have to explain it in my way——

Q. Never mind. Did you have in mind any particular person when you made that remark or gave that answer? A. Collins always——

Mr. Collins: Just a moment.

Q. (By Mr. Nicoson): Did you? Yes or no? Will you please quit arguing with me, Mr. Witness, and pay attention to the questions I put to you and answer them as simply as you can? Will you do that? A. I will try. [916]

Q. All right. Please do. Did you, when you made that answer about the ruling power, have reference to any particular person? Answer yes or no.

A. That is pretty deep for me. I can't explain just who this ruling power is.

Q. Did you or did you not have reference to any particular persons when you used the term “the ruling power” of O’Keefe and Merritt?

A. Well, between Collins and Bill O’Keefe is the ruling power of O’Keefe and Merritt. That is the only way I can explain that.

Q. Now, on page 396 of the record, you were

(Testimony of Charles Spallino.)

being questioned by Mr. Tyre. You were asked these questions and you made these answers:

“Q. On this particular occasion at eight o'clock in the morning following the meeting in Mr. Collins' office, was Mr. Blaney at that meeting, or was someone else there?”

Mr. Nicoson: Maybe I had better go back a little piece and read you the rest of it.

Q. (By Mr. Nicoson): Beginning on page 395. I dislike to read all of this, but I think it is the only safe way to do it.

“Q. (By Mr. Tyre): Mr. Spallino, did you have a conversation with Mr. White on this morning prior to eight o'clock? [917]

“A. Yes.

“Q. Will you state what that conversation was, namely, what you stated and what he stated?

“A. Well, I told him that to have these men ready at—that this fellow would be there, would be there at eight, to have the boys ready at eight o'clock, to be sure that those men did get out there.

“Q. Did you tell him who you meant by this fellow?

“A. Mr. Blaney. I didn't tell him it was Mr. Blaney. I told him it was the fellow from the Teamsters' Union. I didn't name him.

“Q. Did such a meeting take place?

“A. Yes.

(Testimony of Charles Spallino.)

“Q. Where did it take place?

“A. Right across from the shipping, right in front of the shipping department.

“Q. How long did it last?

“A. From thirty to forty minutes.

“Q. Were you there?

“A. Yes, I was present.

“Q. Was Mr. Blaney there?

“A. The first time Mr. Blaney was not there. He sent a fellow there.

“Q. On this particular occasion at eight o'clock [918] in the morning following the meeting in Mr. Collins' office, was Mr. Blaney at that meeting, or was someone else there?

“A. At Mr. Collins' office?

“Q. No, no, at this particular meeting at the shipping department, the meeting you are now describing.

“A. Was Mr. Blaney there you say?

“Q. Yes.

“A. No, he was not there, at this first meeting.”

I will ask you if there was another meeting after that of the shipping department employees?

A. When Mr. Blaney wasn't there? Yes, Mr. Blaney wasn't there and once Mr. Blaney himself came there with two fellows.

Q. Which meeting did Mr. Blaney attend, the first or second? A. The second.

Q. Were you present at that second meeting?

A. Yes, I was.

(Testimony of Charles Spallino.)

Q. Tell us what occurred at that time?

A. Well, Mr. Blaney——

Q. First, who all were there that you recall?

A. Well, most of the truck drivers, all the truck drivers. Some had been working in other departments and were told about this meeting and they were—I don't recall their names—like Johnny Miles, or Jack Miles, rather. Jack Miles was [919] working for the generator department. He was attending that one meeting. I can't remember all their names.

Q. Where did it take place?

A. At the same place, right across from the shipping department.

Q. You say right across. Was that in the street or across the street?

A. There is a parkway there, where they park their cars. It was kind of cold that morning and we went out toward the sun.

Mr. Collins: It was outside the building?

The Witness: Outside the building, yes.

Mr. Garrett: The witness has already testified about this meeting, testified what was said, testified where it was.

Mr. Nicoson: I don't think that is true.

Mr. Garrett: He testified to it on direct, too.

Mr. Tyre: I was just going back over it on cross.

Mr. Collins: He said there were two meetings.

Mr. Garrett: Yes, he testified about the one, about the one when Blaney was there. I can find it in my notes.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I do not have a distinct recollection, but I do have a recollection he did go into that on direct.

Mr. Nicoson: I must remind your Honor and also counsel [920] that you stopped me from going into it on direct. I now propose to go into it, as a matter of redirect. It has been brought up by other counsel.

Trial Examiner Kent: I suppose it will save time. I think the testimony will be brief, limited presumably to two or three questions. You may proceed.

Mr. Nicoson: Read the question.

(The question was read.)

Q. (By Mr. Nicoson): What time did this take place? A. It started at 8:00 o'clock.

Q. How long were you there?

A. Between 30 and 40 minutes.

Q. Was Mr. Blaney there? A. Yes.

Q. What did Mr. Blaney have to say?

A. Well, he explained the Teamsters Union more clearly to the boys there, that were interested in the Teamsters Union.

Q. Anything further? A. No.

Q. I will ask you to state, if you know, what is the beginning working time for the shipping department employees? A. 8:00 o'clock.

Mr. Nicoson: No further questions.

(Testimony of Charles Spallino.)

Recross-Examination

By Mr. Tyre:

Q. I have just a few questions. You [921] testified earlier, Mr. Spallino, that you had not seen Mr. Despol of the Steelworkers Union until after the election. Which election were you referring to when you made that statement?

A. Well, they had a trial election there, which they had a box out there and they had a flag and they—the night before they had given us a sample ballot. [922]

Q. Who do you mean by “they”?

A. The C.I.O., the Steelworkers. They had a sample ballot out there and a trial voting there.

Mr. Nicoson: I object to that, unless he fixes the time.

The Witness: That was within a couple of weeks before the real election. About two weeks, I would say, before the government election or the National Labor Relations Board election.

Q (By Mr. Tyre): You said you hadn't seen Despol after the election. You were referring then to this last election you have just described?

A. Yes.

Q. Before the time when Mr. Levascos made this speech, before the Five and Over Club on election day, about the election which was coming up that same day, had you ever attended any meetings or did you know of any meetings of the Five and Over Club where any speech had been made by any unions?

(Testimony of Charles Spallino.)

Mr. Collins: Just a moment. I will object to that on the ground it has been asked and answered. He testified that the Five and Over Club has fought unions from the very beginning, and there have been lots of speeches there.

Mr. Tyre: On cross-examination he testified that anybody could make a speech before the Five and Over Club. [923] I am asking him whether or not before this particular day anybody had made a speech about unions before the Five and Over Club.

Trial Examiner Kent: The answer may be taken.

The Witness: During the time I held office there was no speeches, to my knowledge.

Q. (By Mr. Tyre): No speeches about what?

A. Of union activities, because I refused to have anything to do with them.

Q. When you and Mr. Levascos were up in Mr. Collins' office, just before Mr. Levascos and you went out to get the drink on the day of the election, do you remember whether or not Mr. Collins told you and said to you, that is, "You can join the union or work for any union that you want"?

A. No, I don't remember him saying that.

Q. Can you state definitely whether or not he did tell you that at that time?

A. I am not so certain at that time that he did say that.

Q. Will you tell us what time of the meeting where Mr. Levascos made the speech to the Five and Over Club began?

A. It was in the neighborhood of 4:10 and 4:15.

(Testimony of Charles Spallino.)

Q. Was that before the working hours were completed for that day? A. That is right.

Q. You testified, when Mr. Collins was asking you questions, [924] Mr. Spallino, that Mr. Collins did tell you that the company could not discharge anybody legally for union activities. Did he say anything else to you at that time besides that particular statement?

A. Yes, he could fire you for spitting on the floor or for anything else; not for union activities.

Q. You testified that the newspaper of the Five and Over Club is printed outside. How long has that newspaper been published at the plant?

A. Oh, I would say in the neighborhood of a couple of years.

Q. And you say it was not handled by the club, but by one man from the company. Who were you referring to as that one man?

A. Bill Cole, Collins' brother-in-law, handled that paper.

Q. How long has he been handling that?

A. Since he was president of the Five and Over. It was his idea. He put it through.

Q. You have been discussing on several different occasions, Mr. Spallino, a certain torture room. I think you said that there is a key to this room. Can you tell us whether or not that room is ordinarily locked or whether it is ordinarily open?

A. Apparently it was locked, because when I went there with [925] Johnny, he opened it with a key.

(Testimony of Charles Spallino.)

Q. Had you ever been in that room before the time Mr. Levascos took you up there?

A. No. That room at one time was a relation of O'Keefe's, he had his—that was his home. He lived in that room before he died. But it has been changed since then. The bed has been taken out and there is a desk and telephone and a couple of chairs.

Q. Since that time, you have not been in the room before you went in there with Mr. Levascos, is that right?

A. That is right. That is the first time.

Q. That is all I want to know. I think you testified that you have never, or you testified you hadn't distributed any cards for the C.I.O. At the time of this election, had you ever distributed any cards for the C.I.O.?

A. Yes, I had. I had said yes that time Mr. Garrett had questioned me. And I had a lot of thinking to do. I wanted to——

Q. When did you distribute any cards?

A. It was before that Sunday meeting that I went to the C.I.O.

Q. Where did you distribute them?

A. In one of the lavatories in the plant.

Q. About how many cards did you distribute?

A. About six or eight. [926]

Q. Have you distributed any others besides those six or eight? A. Not in the plant.

Mr. Tyre: That is all.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Mr. Spallino, while Mr. Cole was the president of the Five and Over Club, do you recall in his capacity as president that he bought some turkeys? A. Yes.

Q. Do you recall the year the turkeys spoiled?

A. That was——

Q. Just answer my question. Do you recall the year? A. Oh, yes.

Q. Do you know whether or not the Five and Over Club paid for the spoiled turkeys or the O'Keefe and Merritt paid for them?

Mr. Nicoson: Objected to, first, on the ground it is immaterial; and second, it is improper recross-examination.

Mr. Collins: I submit I have no objection to disclosing my purpose. This witness testified when he wasn't president the company bought the turkeys and when he was president the company wouldn't buy the turkeys.

Trial Examiner Kent: You may inquire.

Mr. Collins: This witness knows, as a matter of fact, the turkeys were spoiled and they weren't paid for by the company. [927]

Mr. Garrett: I object to that as being incompetent, irrelevant and immaterial.

Trial Examiner Kent: You may answer.

The Witness: Will you repeat that?

Q. (By Mr. Collins): What happened to these turkeys, did any of them ever spoil?

A. Well, yes, they spoiled; at that time I was sick in bed and they brought me my turkey at home.

(Testimony of Charles Spallino.)

Q. The turkeys were paid for by the Five and Over Club that year; weren't they?

A. That is the only year he ever gave any turkeys.

Q. Cole was president at that time?

A. Yes.

Q. There was \$1000.00 or more of turkeys spoiled that year? A. I don't know exactly.

Q. How much did it cost you the year you paid for it?

A. It was somewhere around twenty-one or twenty-four hundred.

Q. The year Cole bought them, the whole shipment spoiled? A. Yes; through his fault.

Q. I don't care whose fault it was. They spoiled that year? A. Yes.

Q. And the club paid for it?

A. I don't know who paid for it. I wasn't an officer at that time; I couldn't say. [928]

Q. You didn't hear the company paid for them that year?

A. I heard the company had put \$900.00 towards the turkeys that year.

Q. The year they spoiled? What year are you talking about?

A. That is the only year he ever gave turkeys, I recall.

Q. Did you ever hear of the company buying some 20-year men watches?

Mr. Garrett: Objected to; incompetent, irrelevant and immaterial.

(Testimony of Charles Spallino.)

Mr. Nicoson: I will restate my objection as being immaterial; not proper recross.

Mr. Collins: The testimony of this witness, Mr. Trial Examiner, was the company bought pins or something like that. And I am trying to find out if the company buys watches for the 20-year men whether they are in or out of the Five and Over Club.

Trial Examiner Kent: There is some doubt as to what the record contains on this matter, in my mind. Yet it will be short. The answer may be taken.

Mr. Collins: I only have about three more questions, Mr. Trial Examiner.

Q. (By Mr. Collins): What is the answer?

A. What is the question?

Q. Did the company buy for 20-year men watches?

A. Well, one time I did see them present watches. [929]

Q. They were given to them whether they were in the Five and Over Club or not; isn't that so? You worked there 20 years, you don't have to be in the Five and Over Club; do you?

A. That is right.

Q. Do you know, of your own knowledge now—and be sure you understand this—do you know, of your own knowledge—not what you heard or guessed, but of your own knowledge—do you know whether or not at the time you talked to Joe, prior to coming up to my office, whether or not he was

(Testimony of Charles Spallino.)

still on the payroll at the Pioneer Electric as a superintendent?

A. The first time when I went to that Sunday meeting?

Q. No. Not the first time. I am now talking about the second time, just before you came to my office. I will reframe the question, Mr. Spallino. Do you recall testifying a moment ago, in response to a question of Mr. Nicoson's, that Mr. Joe Spallino was superintendent of Pioneer Electric Company and then when the war was over he became superintendent of the O'Keefe and Merritt Company, and now he is again superintendent of the Pioneer Electric Company? Do you recall that testimony? A. That is right.

Q. Now, then, I am going to ask you, do you know whether or not, of your own knowledge, he was ever taken off the payroll of the Pioneer Electric Company after the war ended? [930] Of your own knowledge, now.

A. You mean the checks he has been receiving?

Q. Do you know, of your own knowledge, whether or not he wasn't always the superintendent of the Pioneer Electric Company, from the war up to now?

A. I know one conversation I had with my brother——

Q. Just answer my question.

A. How else can I answer your question?

Q. I want to know, do you know of your own knowledge. You can answer that yes or no.

(Testimony of Charles Spallino.)

Mr. Tyre: You can explain it if you answer it yes or no.

The Witness: I will have to explain it.

Q. (By Mr. Collins): Answer my questions, first. Do you know, of your own knowledge?

A. Well, I guess—I guess the way laws are you have to just answer questions the way they are put to you.

Trial Examiner Kent: Do it. If you don't think that is a full and complete answer, I have told you before you can amplify and explain it.

The Witness: It was not my own knowledge.

Q. (By Mr. Collins): That is all I want to know. Getting down to these meetings we had at the Five and Over Club, haven't you heard me make speeches about the union down there in the meeting of the Five and Over Club? [931]

A. You haven't made many speeches lately; the only speech you made——

Q. Just a minute.

Mr. Tyre: Just a second. The examination by me was not "ever," but "since" he was president. That was his only testimony. He is now qualifying his answer.

Mr. Collins: That is not the statement, Mr. Tyre. This witness said that while he was president none of these things happened.

Q. (By Mr. Collins): I want to know if you ever heard any union speeches in there.

A. Yes, during the time your brother-in-law was president.

(Testimony of Charles Spallino.)

Q. So there have been union speeches made at the Five and Over Club? A. Yes.

Q. Besides the one Mr. Levascos talked about? A. Yes.

Q. Now, then, showing you this certificate on conduct of election——

Mr. Garrett: One moment. Before me get into something else, will you object, Mr. Collins, if I call the attention of all and sundry here present the hour of 12:00 noon has arrived?

Trial Examiner Kent: According to my watch it is two minutes of. [932]

Mr. Collins: I want to ask one question.

Mr. Garrett: I can't even fuss for two minutes. It is a hard bunch.

Trial Examiner Kent: It is not high noon yet, according to my watch.

Q. (By Mr. Collins): Calling your attention to certificate of conduct of election, I want to ask you, were you working for the C.I.O., the O'Keefe and Merritt Company or the American Federation of Labor when you signed your name and acted as a watcher at that poll?

A. I had refused to accept that job at that time. I was working——

Q. Answer my question. It is a simple question. I will reframe it. Were you at the time you acted as watcher at that election working for the O'Keefe and Merritt as their agent or the American Federation of Labor or the C.I.O.?

(Testimony of Charles Spallino.)

A. I think I made a statement I have been C.I.O. at heart all the time.

Q. You were working for the C.I.O. when you were watching for that election? A. Yes.

Q. When you said a while ago no one from the Board——

Mr. Garrett: One moment. It is now becoming 12:00 o'clock.

Trial Examiner Kent: I think Mr. Collins only has one [933] or two questions. I think we might dispense with them.

Mr. Garrett: My point is if the attorneys here want to have—I think we should adjourn.

Mr. Nicoson: We are wasting more time talking about it than if you let him ask the questions.

Mr. Garrett: We will be here 10 minutes from now.

Mr. Collins: No, you won't.

Trial Examiner Kent: Proceed.

Q. (By Mr. Collins): Do I understand your testimony now to be that no one from this Board appointed you to act as a watcher at that poll?

A. No.

Q. They didn't? A. No.

Q. Then when you said that somebody from the Board forced you to act as a watcher, that was a mistake?

A. May I explain how that happened?

Q. Answer my question.

Trial Examiner Kent: Go on. Tell it.

(Testimony of Charles Spallino.)

The Witness: Mr. Roberts run into me in the aisleway and he grabbed me—the government people were with him—to hurry me up, to get at the table there to take over my position as an observer.

The government man pins a button on me and drags me over to that table, you might as well say. The people were [934] out there waiting, to get started.

Q. (By Mr. Collins): Do you want to change your testimony now to say the government man did push you over there?

A. I didn't name any government man to say that.

Mr. Collins: That is all.

(Witness excused.)

Trial Examiner Kent: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [935]

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: On the record. We might proceed. Call the next witness, please.

Mr. Nicoson: Mr. Daniel P. O'Keefe.

DANIEL P. O'KEEFE

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. You are Mr. Daniel P. O'Keefe, are you not?

A. Yes, sir.

Q. Do you have any connection with the O'Keefe and Merritt Company? A. President.

Q. Is the O'Keefe and Merritt Company a California corporation? A. Yes.

Q. The O'Keefe and Merritt Corporation succeeded a partnership composed of Daniel P. O'Keefe and Robert J. Merritt, did it not?

A. Yes.

Mr. Garrett: Wait a minute. May the answer go out for the purpose of my objection? May I have the question. [936]

(The question was read.)

Mr. Garrett: May the witness be instructed not to answer, so counsel can interpose objections, until there has been an opportunity for objection? May the witness be instructed not to answer until there has been an opportunity for an objection.

Trial Examiner Kent: Well, a reasonable opportunity. A slight delay after the question is asked, yes.

Mr. Garrett: I will object to that as calling for a conclusion, and object to it as leading. This at-

(Testimony of Daniel P. O'Keefe.)

torney for the Board is calling this witness as his own witness. He can't lead him.

Mr. Nicoson: I am a little surprised at Mr. Garrett for making that sort of an objection, in view of the fact that he practiced law in the State of California. I will call his attention to Section 2055 of the Code of Civil Procedure, which provides that where the opposite party calls an officer, the president, superintendent, or managing agent of a corporation which is a party, either pro or con, that he will be examined as if on cross-examination, the Examiner not being bound by his answers, that he may rebut and impeach the witness if he so desires.

Mr. Collins: I wish to call your attention, Mr. Trial Examiner—

Mr. Garrett: Just a moment. I think that probably if [937] counsel wants to do that, this is the first time in my experience I have ever seen the attorney for the Board try to proceed in that way. I think the witness ought to be excused so we can argue the legal points involved.

Mr. Nicoson: I have no objection.

Mr. Collins: I have no objection.

Trial Examiner Kent: No objection. Of course, that is a general rule, I think generally statutory except that under some statutes it is customary for the interrogation to be carried on as though the counsel were examining his own witness, then if it appears that the witness might be—well, let me use the word arbitrary, which is not just the one I am

(Testimony of Daniel P. O'Keefe.)

seeking, then he can proceed by way of cross-examination. However, as to this particular question, in view of Mr. O'Keefe's position, I think the question, this particular question under these circumstances I can't see would be substantially objectionable, anyway.

Mr. Garrett: May I have the question read again, your Honor?

Trial Examiner Kent: Read the question.

(The question was read.)

Mr. Garrett: Well, your Honor, you will concede that this is leading. The only question is whether counsel, who called this witness on direct, has a right to lead because of some theory the witness is adverse. It is leading; isn't [938] it? Could it be anything else but leading and suggestive? Furthermore, it calls——

Trial Examiner Kent: I think it is just a foundation question. I can't see myself how it would be possibly harmful.

Mr. Garrett: It calls for a legal conclusion.

Trial Examiner Kent: Here is the interpretation I put to it: Originally there was a partnership, and that was succeeded by a corporation. Now, what you are apprehensive of—I assume, I may be wrong, maybe I am guessing too much—the partnership came again into being.

Mr. Garrett: Well, all right.

Trial Examiner Kent: Well, let's go on.

Mr. Garrett: In the first place, it is leading. In

(Testimony of Daniel P. O'Keefe.)

the second place, I don't think anyone here will deny it calls for a conclusion, a legal conclusion.

Trial Examiner Kent: I think in view——

Mr. Garrett: For which the witness hasn't been qualified to give.

Trial Examiner Kent: I think, in view of Mr. O'Keefe's status——

Mr. Collins: Mr. Trial Examiner, I should like——

Trial Examiner Kent: ——he is able to make that sort of a conclusion.

Mr. Garrett: He is able to say that a corporation has [939] all the obligations of a successor who is a partnership I think would take an acute lawyer to make that statement, after a thorough bringing out of all the facts.

Trial Examiner Kent: Well, I think you can clear up your particular objection by way of cross-examination.

Mr. Garrett: I will object. I will object at the outset of these proceedings. I have a contract here I am trying to protect. I will object at the outset of these proceedings——

Trial Examiner Kent: In view of your statement, Mr. Garrett, I think I will excuse the witness. I would like to have a little discussion——

Mr. Garrett: Let counsel show where 2055 applies.

Trial Examiner Kent: ——about the particular statute under *which are* proceeding.

You might step out in the hall, Mr. O'Keefe, a few minutes.

(The following proceedings were had outside the presence of the witness:)

Trial Examiner Kent: Off the record.

(Discussion off the record.) [940]

Trial Examiner Kent: Back on the record.

Mr. Nicoson: What is your ruling now?

Trial Examiner Kent: The ruling is that you should proceed by way of—in the ordinary fashion, direct examination. If it appears that the witness is evasive, why then I think counsel would be entitled to proceed by way of cross-examination.

Mr. Tyre: Mr. Examiner, I would like to call your attention to something about Section 205? that Mr. Garrett has either inadvertently neglected to call to your attention or perhaps he didn't cover the subject at all. He said this is a criminal or quasi criminal action, and for that reason——

Trial Examiner Kent: That was off the record.

Mr. Tyre: 2055 does not apply if this is a criminal or quasi criminal action. There is no reason in the world why 2055 should not apply. It happens every day in the week where there are two parties having a matter between them involving an injunction, on party seeks an injunction against the other, just as in the case before your Honor one party seeks an injunction against the company. The only way that injunction can be enforced by the civil courts is by contempt of court, and likewise here it will be enforced by the Circuit Court of Appeals, decree. The situation is identical here as in the

California courts, an injunction proceeding, like any other proceeding which is civil, the plaintiff has [941] a right to call the officer of the corporation as a witness whom he can ask questions as on cross-examination. In other words, there isn't any reason in 2055 in this case why he cannot ask this witness leading questions if he wants, as though he were called on for cross-examination rather than direct testimony. As a matter of fact, we know Mr. O'Keefe represents the O'Keefe and Merritt Company, we know he is the respondent in this matter and he is familiar with these facts. It will save a lot of time as well as abide by Section 2055 of the Code of Civil Procedure by permitting the type of question Mr. Nicoson is now asking. I submit that you should reconsider the ruling for the reasons I have stated, and permit Mr. Nicoson to proceed along that line.

Trial Examiner Kent: Well, I treated the original question, of course, as a preliminary question and a question I thought might be time-saving. I do think, though, the general purposes, to begin with, the statute is not expressly applicable. This is not an adversary proceeding.

Mr. Nicoson: Mr. Examiner, I would like to ask you, on the record, when the United States Government proceeds against any party, what kind of a proceeding is that? Is that an adversary proceeding or not?

The United States Government has issued a complaint against O'Keefe and Merritt. They are out to sustain that complaint through me as their attor-

(Testimony of Daniel P. O'Keefe.)

ney. The proceeding of [942] the United States Government against O'Keefe and Merritt, if you can say that is not an adversary proceeding, but merely a matter of investigation, I beg to differ with you. There is a line of cases which involves the so-called representation proceedings decided in the Supreme Court and in various Circuit Courts, and holds that is not an adversary proceeding, but is a mere investigation under the Act by the National Labor Relations Board.

I will challenge counsel here or the Trial Examiner or anyone else to ever show me in any decision of any court in this land where a proceeding like this was ever held not to be adversary. If it is necessary I will take the time to look it up. I can show you decision after decision which holds it is adversary. You have ruled, though. The record shows my exception.

Trial Examiner Kent: Having called the witness, proceed by way of direct examination. If the witness appears evasive or arbitrary in answering questions, then you may ask the rule be otherwise changed and proceed by way of cross-examination.

Q. (By Mr. Nicoson): Mr. O'Keefe, have you ever seen me before in your life?

A. Have I what?

Q. Have you ever seen me before in your life?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial. [943]

Mr. Collins: I join in that objection.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: The answer may be taken.

Mr. Garrett: Frivolous; utterly frivolous.

The Witness: I don't remember having seen you.

Q. (By Mr. Nicoson): Do you remember ever having a conversation with me about any phase of this case?

Mr. Garrett: Same objection.

Trial Examiner Kent: You may answer.

The Witness: No.

Q. (By Mr. Nicoson): I will ask if you know whether or not there is a building located on Olympic Street known as 3700 Olympic Street.

A. Yes.

Q. You know that? A. Yes.

Q. Do you know who occupies that building?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial; not tending to prove or disprove any of the issues in this case.

Mr. Collins: I join in that objection.

Mr. Garrett: I refer you to the fact the complaint speaks as of its date, not as of the present date.

Trial Examiner Kent: Is that the former location of the business or the present location?

Mr. Nicoson: It is the present location; it is the location [944] of the whole business.

Trial Examiner Kent: All right. The answer may be taken. I think this is purely preliminary.

Mr. Garrett: It is a leading question. It calls for a conclusion that may be damaging to my litigants here.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: How can it be damaging?
That is the reason I asked the question.

Mr. Garrett: It calls for a conclusion.

Trial Examiner Kent: Let's be realistic, anyway.

Mr. Nicoson: It is about time.

Mr. Garrett: I ask for a ruling on my objection.

Trial Examiner Kent: The objection is over-ruled. The answer may be taken.

The Witness: What was the question, now?

Mr. Nicoson: Read the question to the witness.

(Question read.)

Mr. Garrett: May that question be answered yes or no?

Trial Examiner Kent: Well, in view of the situation and the information I got by way of an answer to counsel, I see no reason why the witness can't give a full answer.

Mr. Collins: Does counsel wish to know who all the employees are that occupy it, or the various companies that occupy it?

Mr. Nicoson: I don't think that is a question I need try to answer. I don't propose to let either one of these [945] counsel examine this witness for me.

Trial Examiner Kent: The witness may answer.

Mr. Garrett: Objected to as calling for a conclusion. May I have a ruling, your Honor?

Trial Examiner Kent: Yes. He may answer.

Mr. Nicoson: Will you now read the question?

Trial Examiner Kent: Your objection is over-ruled.

(Testimony of Daniel P. O'Keefe.)

(The question was read.)

The Witness: Yes.

Q. (By Mr. Nicoson): Who occupied that building, Mr. O'Keefe?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: O'Keefe and Merritt Company, Pioneer Electric Company. I don't remember whether Service, Incorporated, is still there or not. They were for a long time. Whether they are still in there or not I don't remember.

Q. (By Mr. Nicoson): Now, you are acquainted with the building; are you not? A. Yes, sir.

Q. Will you describe the boundaries with relation to streets by name?

A. Bounded by Olympic, Los Palos, Union Pacific and—— [946]

Q. Calzona? A. Calzona.

Q. In relation to those you started on Olympic and you have gone around the building as if you were walking to your right at all times; is that correct? A. That is right.

Q. I will ask you if you know who are the officers of the O'Keefe and Merritt Corporation besides yourself. A. Yes.

Q. Who are they? A. R. J. Merritt.

Q. And what capacity?

A. And W. J. Boyle.

Q. W. J. Boyle. W. J. Boyle is the vice-president? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. And Mr. Merritt is secretary and treasurer; is that correct? A. Yes.

Q. I will ask you, if you know, who are board of directors? Who composes the board of directors?

A. Yes.

Mr. Garrett: May I have a continuing objection to this line of questioning?

Trial Examiner Kent: Yes.

Mr. Garrett: Incompetent, irrelevant and immaterial. [947] On the ground that the present status of the corporation has no bearing on or will tend to prove or disprove any of the issues in this case.

Trial Examiner Kent: The record may so show you have a continuing objection.

Q. (By Mr. Nicoson): Now, did you tell me you knew who the directors were, Mr. O'Keefe?

A. Yes.

Q. Will you please name the board of directors?

A. Mr. R. J. Merritt, W. J. Boyle, Lucile Merritt, W. J. O'Keefe and myself.

Q. Now, with respect to the corporate officers which you have named, have they been the corporate officers throughout the life of the corporation?

Mr. Garrett: Just a moment, just a moment. May I have the question reread, please?

Trial Examiner Kent: Read the question, Mr. Reporter.

(Question read.)

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: In view of your Honor's ruling, I point out that that question is leading.

Trial Examiner Kent: That is the way you take it.

Mr. Garrett: I also think it is incompetent, irrelevant and immaterial, not being confined to any of the times at issue in this case.

Trial Examiner Kent: He may answer. [948]

Q. (By Mr. Nicoson): Do you understand the question?

A. As I understand, you want to know if they are the same directors that have been there since we started in business.

Q. I will ask you about the directors, but my question went only to the officers.

A. Officers, no.

Q. Have there been other officers besides yourself, Mr. Lewis J. Boyle and Robert J. Merritt?

A. Yes.

Q. Have there been other directors besides those five which you have named, being yourself, Lewis J. Boyle and Robert J. Merritt, Lucille Merritt and W. J. O'Keefe? A. Yes.

Q. In January of 1942 do you recall who were the corporate officers at that time?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial, and not having any tendency to prove or disprove any of the issues in this case.

Trial Examiner Kent: The answer may be taken.

A. I am not sure that I remember.

Q. (By Mr. Nicoson): Do you recall who the

(Testimony of Daniel P. O'Keefe.)

board of directors were at that particular time?

A. No.

Mr. Garrett: Same objection, and the further objection it is not the best evidence. [949]

Q. (By Mr. Nicoson): Do you recall, Mr. O'Keefe, during the months of September, October, November and December of 1945 who the corporate officers of O'Keefe and Merritt were? A. Yes.

Q. Who were they?

A. 1945, corporate officers, that would be as stated, Mr. Merritt, R. J. Merritt, W. J. Boyle, Lucille Merritt, Bill O'Keefe and myself.

Q. You have named now the board of directors, haven't you? A. Yes, that is right.

Q. All right, now. A. The officers——

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial. What would be the materiality to this inquiry? There is not the slightest.

Trial Examiner Kent: I will overrule the objection. It is relevant and material.

Mr. Garrett: I wonder why, on what undisclosed theory, can the composition of the board of directors be relevant to any issues in this case.

The Witness: You said I was to answer?

Trial Examiner Kent: Yes, you may answer.

The Witness: R. J. Merritt, W. J. Boyle and myself.

Q. (By Mr. Nicoson): And you, of course, during that period of time were the president, is that correct? A. Yes. [950]

Q. And Mr. Boyle was the vice president and

(Testimony of Daniel P. O'Keefe.)

Mr. R. J. Merritt was secretary-treasurer.

A. Yes.

Q. How long have you, Mr. O'Keefe, been the president of the O'Keefe and Merritt Corporation?

Mr. Collins: Objected to as immaterial.

Mr. Garrett: Same objection.

Trial Examiner Kent: You may have a continuing objection. The answer may be taken.

Mr. Garrett: Thank you.

The Witness: I don't know. A number of years, if that will answer it. I don't know.

Q. (By Mr. Nicoson): Will you approximate from say the present backward, the approximate number of years you have been president?

A. I think around twenty-eight or nine, somewhere around there, but I don't remember.

Q. It is a fair statement to say that you are acquainted with the business of the O'Keefe and Merritt Corporation, is it not?

Mr. Garrett: Objected to as leading and suggestive. You know, I don't believe in letting the camel get his head under the tent.

Trial Examiner Kent: You may answer. [951]

The Witness: Well, I presume that is how I hold my job.

Trial Examiner Kent: In other words, you are modest about it.

Q. (By Mr. Nicoson): During the years that you have been president of the O'Keefe and Merritt Corporation, has the kind of business that it engaged in been changed in any substantial effect?

(Testimony of Daniel P. O'Keefe.)

A. That word substantial is what would stick me.

Q. On the 1st of September, 1945, what kind of business, if any, was the O'Keefe and Merritt Corporation engaged in?

A. As we usually refer to business, that is when you sell something, and we sold nothing, I should say, in that time that you referred to.

Q. Were you making anything at all during that time? A. In September, 1945.

Q. That is correct.

A. No, I wouldn't think so.

Q. Going back to January 1st, 1940, what kind of business, if you know, was O'Keefe and Merritt engaged in at that particular time?

Mr. Collins: Mr. Trial Examiner, I have not been making any objections because I would like to get Mr. O'Keefe out of here, but I don't see where we are getting anywhere with going back into matters that transpired before the issuance of this complaint. It seems to me we are going very far [952] afield in going back to matters which exceed the farthest recollection of the most adverse witness. I submit this is entirely immaterial, does not tend to prove or disprove anything in this case.

Mr. Nicoson: Well, if the boys insist on my doing it the hard way, I will try to do it the hard way. I started out to do it the easiest way that I could think of, so as to finish up with Mr. O'Keefe so that he could get back to whatever business he would like to go back to.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: Among other things, I believe that counsel is getting the facts to show whether or not the business is concerned with commerce within the meaning of the Act.

Mr. Garrett: There is no issue on that.

Mr. Collins: Mr. Trial Examiner, I offered a perfectly legal, normal objection to the testimony which is about to be adduced by counsel for the Board, and I cite his conduct as misconduct, doing it the hard way, if the boys wish to make objection he is going to do it the hard way. Let's just do it the legal way and get out of here.

Trial Examiner Kent: I think he is trying to proceed to build up the kind of record the Board expects.

Mr. Garrett: I want to make it clear as far as Mr. O'Keefe is concerned I am not concerned with getting him out of here. He has been fighting my unions for 15 years, and I don't care anything about his convenience. [953]

Trial Examiner Kent: It is true that the answer generally I think admits some of the jurisdictional facts. It is customary and proper where jurisdiction has to be shown, it is customary to get the jurisdictional facts in the record.

Mr. Garrett: I don't think there is any issue of jurisdiction.

Mr. Collins: Not at all. I admitted we are engaged in interstate commerce within the meaning of the Act, in the answer.

Trial Examiner Kent: We need additional foun-

(Testimony of Daniel P. O'Keefe.)

dation for that. I don't think you can rely on a plain admission. You may proceed.

Mr. Nicoson: Will you please read the question to the witness?

(Question read.)

A. Manufacturing gas appliances and electric refrigerators, I think would cover it generally.

Q. (By Mr. Nicoson): And by gas appliances you would include stoves, gas stoves? A. Yes.

Q. Now, up to January 1st of 1946, did the kind of business that you were engaged in change in any manner?

Mr. Collins: I will stipulate that during the war they manufactured electric generators and they had the wiring [954] done by the Pioneer Electric Company, and that change happened to result in the war ending in our favor.

Q. (By Mr. Nicoson): Did they manufacture any stoves during that period?

Mr. Collins: During the war they did not manufacture any stoves, as far as I can recall, except maybe cleaning up a few of them.

Mr. Nicoson: Of course he is familiar with the business and you say you don't know. I think maybe it would be better if we had the testimony from the witness.

Trial Examiner Kent: It might be.

Mr. Nicoson: Will you please read the witness the question?

(Question read.)

The Witness: Until 1946?

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Nicoson): Until January 1st of this year. A. Yes, it did.

Q. In what manner did it change?

A. Well, we stopped manufacturing gas appliances in early 1942, I believe it was, and started making generating sets for the government, and other things for the government.

Q. Were any of these generators manufactured for the United States Government or any of its subdivisions? A. All of them.

Mr. Nicoson: Now, if we may go off the record. May we? [955]

Trial Examiner Kent: Yes, off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: It is stipulated by and between Mr. Collins and myself that during the year of 1945 O'Keefe and Merritt produced products in excess of \$2,000,000.00, at least 10 per cent of which were shipped out of the State of California.

Mr. Collins: I will so stipulate.

Q. (By Mr. Nicoson): I believe you testified, Mr. O'Keefe, that you did manufacture some generators for subdivisions of the United States Government; is that correct? A. Yes.

Q. And you had contracts for the production of those generators with the government; did you not? A. Yes.

Q. Have you brought those contracts with you, in response to the subpoena?

Mr. Collins: No, Mr. Nicoson, he doesn't have

(Testimony of Daniel P. O'Keefe.)

them with him. I thought that was covered by my offer to stipulate we were engaged in interstate commerce.

A copy of all the contracts and so on you referred to in your Appendix A in the subpoena duces tecum, if we complied with them, would literally require a truck and a couple of truck drivers. There are too many records. If you will tell me specifically what you want I will get it down here, in the [956] event you can't accept our stipulation. I see no jurisdictional question involved at all. I have admitted in the pleadings——

Mr. Nicoson: I am perfectly willing to take this gentleman's statement for it, without requiring you to bring all of the contracts in.

Mr. Collins: Very well.

Mr. Nicoson: But I was anticipating the usual objections, and I wanted to do it the right way.

Mr. Collins: Proceed.

Q. (By Mr. Nicoson): Your contract with respect to the generators was with the signal department of the Army; was it not?

A. We had contracts with the Signal Corps, the Navy, Engineers, and I believe the Air Corps.

Q. If you can approximate it, about what was the time you entered into the first one of those contracts? Was that about August, 1948?

A. I can't remember, really. I think it was earlier than that. I think it was in the latter part of '41. I am not sure about that.

Q. Well, I think you will recall that Pearl

(Testimony of Daniel P. O'Keefe.)

Harbor came on December 7, 1941. War was declared a few days later. Was it before the end of the year you got the contracts?

A. I think so. [957]

Q. With respect to the generators, that you say you had the contract for, did you have a contract for the manufacture of electrical staters? Do you recall anything like that?

Mr. Garrett: May I have the question read?

(The question was read.)

The Witness: The staters are part of the generators. If there were some staters in the contract—I don't remember—they would be in there as spare parts.

In nearly every contract there was some spare parts for a certain percentage of the generator order, and that would include some staters, I presume.

Q. (By Mr. Nicoson): Would it be a fair statement to say this contract or these contracts were generally broken down to stater winding and assembly of the generators and its parts? Would that be fair to state that? A. No.

Mr. Garrett: Objected to as leading.

Mr. Nicoson: He said no, it wouldn't be fair.

The Witness: No. The contracts were for generators, and additional spare parts, for parts that might wear out. Not part of the particular generators on the order, but something as a replacement. When they would be shipped overseas if something wore out they would have a spare part.

(Testimony of Daniel P. O'Keefe.)

Q. Now, assuming, as your best recollection is, you [958] received those contracts the first time before the end of the year 1941—let's take it to the year 1942—did the O'Keefe and Merritt Corporation perform all of the work in the execution of those contracts?

Mr. Garrett: Same objection.

Trial Examiner Kent: The objection may be overruled, with the understanding your objection does go to this line.

The Witness: No, we never did all the work on those generators.

Q. (By Mr. Nicoson): But is it true that O'Keefe and Merritt did some of the work on those contracts? A. Yes.

Q. And if O'Keefe and Merritt didn't do all the work on the contracts, what concerns or people did the balance of the work?

A. I can't recall. It was probably ten sub-contractors on those. I wouldn't remember their names offhand. [959 & 960]

Q. If I suggest to you the name of Pioneer Electric Company, does that—

A. That was one of them.

Q. —refresh your recollection?

A. Yes, that was one of them.

Q. Can you name any of the others?

A. Vardeo Manufacturing did some work. Lyon—I think it was Lyon Electric; I am not sure of that, either. It is Lyon something. They were electrical. A lot of others; Ace Foundry and

(Testimony of Daniel P. O'Keefe.)

Whiting-Mead. I know there were a lot of them; I can't remember them.

Q. Are you familiar with the term "prime contractor"? A. Yes.

Q. Do you know whether or not O'Keefe and Merritt was the prime contractor in these contracts with the government or not? A. Yes.

Mr. Garrett: One moment, please. Please wait until I object.

The Witness: I just said yes, I know.

Trial Examiner Kent: The objection is overruled. He may answer.

Mr. Nicoson: The answer is in, and he said yes.

Q. (By Mr. Nicoson): In the performance of those contracts, was the O'Keefe and Merritt a prime contractor? Did I ask you that? [961]

A. Yes.

Q. Then as to the performance of those contracts, the O'Keefe and Merritt did part of the work and part of it was done by other people; is that correct? That is, other people or other concerns.

A. That is right.

Q. Is this about the way it worked: The other people besides O'Keefe and Merritt made, manufactured or processed certain parts which, in turn, they brought back to O'Keefe and Merritt and O'Keefe and Merritt assembled them into the final product and thereafter it was delivered to the government; is that about the way it happened?

A. Yes.

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: I understand I have a continuing objection?

Trial Examiner Kent: Yes, it will go to the line.

The Witness: Yes.

Q. (By Mr. Nicoson): I think you said part of that work was done by the Pioneer Electric Company. A. Yes.

Q. If you know, when did the Pioneer Electric Company come into existence?

A. No, I don't know.

Q. After the first of September, 1942, up to and including V-J Day, which as I now recall, was August 14, 1945, do you [962] know where the Pioneer Electric Company was located?

A. I know where they were located. I am not sure of the dates there. I know where they were located.

Q. Well, within the scope of your knowledge, will you state for the record where they were located at that time?

A. I would have to say on Los Palos Street, but I don't know the number. I mean if you wanted the address of their office——

Q. Just to be brief, it was within this building that you have described as 3700 Olympic Boulevard; isn't that right?

A. Yes. It is the one building that covers——

Q. More particularly, it was in the northeast corner of that building; isn't that right?

A. Well, they didn't have the corner, but they were in the side of the building facing Los Palos.

(Testimony of Daniel P. O'Keefe.)

Q. Now, I am not trying to be facetious about this, Mr. O'Keefe, but have you been around on that door on Los Palos side of the building?

A. Yes.

Q. Have you noticed whether or not there is a number up there, as a street number? A. No.

Q. Do you happen to know between Olympic Street and what you said is Union Pacific, on Los Palos side, what hundred block that is in? [963]

A. What?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: No.

Mr. Garrett: It is now 3:30, I notice. May we have the afternoon recess?

Trial Examiner Kent: Yes, we might have a 5-minute recess.

(A short recess was taken.)

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 13, for identification.)

Q. (By Mr. Nicoson): Mr. O'Keefe, I hand you a document consisting of two pages in a legal back, and ask you to examine and state if you know what it is.

A. Yes. That is the lease that we gave to Pioneer Electric Company.

Q. By the O'Keefe and Merritt Company?

A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. That is the first lease that you had with the Pioneer Electric Company, is that correct?

A. Yes.

Q. And the date on that shows November 16, the 16th day of November, 1942, is that correct?

A. Yes. [964]

Q. Directing your attention to the second of the typed pages, I will ask you if that is your signature on there under the name O'Keefe and Merritt, Lessor?

A. Yes.

Q. Now, also directing your attention to the words Pioneer Electric Company, lessee, by—and there is a blank space, do you know whether or not the Pioneer Electric Company signed by any particular person, of your own knowledge?

A. No, I wouldn't remember. I presume we have a copy, our copy of the lease signed by someone of the Pioneer Electric in the office and can produce it if necessary.

Mr. Nicoson: I show this to the parties and offer it in the record as Board's Exhibit 13.

Mr. Garrett: That is all right.

Mr. Collins: No objection.

Mr. Garrett: Is that from O'Keefe and Merritt to Pioneer Electric?

Mr. Nicoson: That is right, dated November 16, 1942.

Trial Examiner Kent: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 13, for identification, was received in evidence.)

(Testimony of Daniel P. O'Keefe.)

BOARD'S EXHIBIT No. 13

LEASE

This Indenture, made this 16th day of November, 1942, between O'Keefe & Merritt Co., a corporation, as lessor, and Pioneer Electric Co., a co-partnership, as lessee.

Witnesseth, that the said lessor does by these presents lease and demise unto the said lessee, and the said lessee does hereby hire and take from the said lessor, certain premises located in Los Angeles County, State of California, described as follows, to-wit: 11,740 square feet of floor space, now enclosed, (excluding space occupied by the continuous enameling oven) and known as 1221 Los Palos, Los Angeles, California, with the appurtenances, for the term of one year from the 16th day of November, 1942, at the rent or sum of Five Hundred (\$500.00) Dollars, payable in advance on the tenth day of each and every month during said term.

And It Is Hereby Agreed, that if any rent shall be due and unpaid, or if default shall be made, in any of the covenants herein contained, or breach thereof, then it shall be lawful for the said lessor to re-enter the said premises and to remove all persons and goods therefrom; and the said lessee does hereby covenant, promise and agree to pay the said lessor the said rent in the manner hereinbefore specified, and not to let or underlet the whole or any part of the said premises without the written consent of the said lessor, nor to assign the lease

(Testimony of Daniel P. O'Keefe.)

or any part thereof without said written consent; nor shall the interest of the lessee be transferred by operation of law through any execution sale or bankruptcy proceeding; and, at the expiration of the said term, the said lessee will quit and surrender the said premises in as good state and condition as reasonable use and wear thereof will permit.

The lessor shall have the right, at any time upon entering into a contract for the sale of the premises, to cancel this lease, and the term hereby granted, upon giving the lessee thirty (30) days' notice of its intention so to do, and upon the expiration of said thirty days, the lessee agrees to vacate the premises and to surrender this lease and the term hereby granted.

Lessee agrees to maintain adequate fire protection and to so conduct its business so as not to become a hazard to the O'Keefe & Merritt Co. property immediately adjacent thereto.

In Witness Whereof, the parties to these presents have hereunto set their hands the day and year first above written.

O'KEEFE & MERRITT CO.,

Lessor

By D. O'KEEFE

PIONEER ELECTRIC CO.,

Lessee

By

[Endorsed]: Filed March 20, 1946.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 14, for identification.)

Mr. Nicoson: I at this time, as Board's Exhibit 14, offer a certified photostatic copy of the certificate of business, fictitious firm name filed October 15, 1942 with J. F. Maroney, County Clerk, also photostatic copy of the affidavit of publication of the operation under a fictitious name filed with J. F. Maroney, County Clerk, and on November 6, 1942, a photostatic copy of business, fictitious firm name, filed with J. F. Maroney, County Clerk, January 28, 1944, also an affidavit of publication with respect to that filing, and also filed with J. F. Maroney, County Clerk, February 25, 1944; further certificate of business, fictitious firm name, filed November 28, with Mr. J. F. Maroney, County Clerk, and also the affidavit of publication of operating under a fictitious firm name filed with J. F. Maroney, County Clerk, December 29, 1945, all with respect to the Pioneer Electric Company, together with the certification of J. F. Maroney, County Clerk, as being photostatic copies of documents legally on file under his care.

Mr. Garrett: Is that all Board's 14?

Mr. Nicoson: That is all 14, yes.

Mr. Garrett: No objection.

Mr. Collins: No objection.

Trial Examiner Kent: It may be admitted.

(The documents referred to were marked as

(Testimony of Daniel P. O'Keefe.)

Board's Exhibit No. 14, heretofore for identification, was received in evidence.)

[Board's Exhibit No. 14 set forth on pages 1716 to 1703] [966]

Mr. Nicoson: We have a stipulation, if your Honor please.

It is stipulated by and between the parties to these proceedings that Robert J. Merritt and Willis J. Boyle, both of whose names appear and who affixed their signatures to the Certificate of Business Fictitious Firm Name are the same Robert J. Merritt and Willis J. Boyle this witness has previously identified as being corporate officers of the O'Keefe and Merritt Corporation.

Mr. Collins: I will so stipulate.

Mr. Garrett: So stipulated. Mr. Reed is not in the room. He says I may so stipulate for him, also.

Trial Examiner Kent: The record may so show.

Q. (By Mr. Nicoson): Mr. O'Keefe, I hand you Board's Exhibit 14 and direct your attention to the copy of the Certificate of Business Fictitious Firm Name, which was filed October 15, 1942, and direct your attention to the name Lewis M. Boyle, and I will ask you to state if you know who he is.

A. Yes, he is a brother of W. J. Boyle.

Q. W. J. Boyle is the Willis J. Boyle who has also signed that document? A. Yes.

Q. Thank you. Mr. O'Keefe, during the war years and up to V-J Day, with respect to that lease that we have put in as Board's Exhibit 13, and

(Testimony of Daniel P. O'Keefe.)

particularly with respect to the [967] footage occupied by the Pioneer at that time, was there any barrier, physical barrier that separated Pioneer from the O'Keefe and Merritt portion?

A. Yes.

Q. What kind of a barrier? A. A wall.

Q. Was it ceiling height?

A. I don't know how high ceiling height is. But I don't remember how high the wall was, either.

Q. Is it your testimony you don't recall whether it ran all the way to the ceiling or just part of the way? That is what I am trying to find out.

A. I don't remember whether it went all the way to the ceiling or not. It might have some places and might not in others; I am not sure.

Q. Did that barrier or wall completely separate Pioneer from the portion occupied by O'Keefe and Merritt?

A. When you say "completely" now—we had doors. There were doors, I think, two doors going in and out.

Q. What I am driving at, was it completely walled in and separated in that manner from the O'Keefe and Merritt, forgetting for the moment you did have doors going in there? A. Yes.

Q. As you testified, there were doors to go in and come out of the Pioneer portion? [968]

A. Yes.

Q. Now, you had a tool crib there at one time surrounded by some chicken wire or something;

(Testimony of Daniel P. O'Keefe.)

isn't that right? That is, before Pioneer came in there, is that correct, as you recall?

A. No, I don't think so.

Q. You don't remember that?

A. I don't think it was there.

Q. From the time Pioneer occupied that space up to and including V-J Day, do you know from what door the Pioneer received its incoming materials and freight?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Q. (By Mr. Nicoson): Do you understand the question? A. Yes.

Trial Examiner Kent: The answer may be taken.

Mr. Nicoson: Your answer is you don't know?

Mr. Garrett: May I have a continuing objection?

Mr. Nicoson: Well, he is not answering. He is shaking his head.

Mr. Garrett: These chicken coops and tool cribs and so forth, I don't want to interpose the objection all the time it is immaterial, which takes time. May I have a continuing objection?

Trial Examiner Kent: Yes, a continuing objection to the [969] whole line.

Mr. Garrett: As immaterial.

Q. (By Mr. Nicoson): Do you know whether or not during the period of Pioneer's existence, or rather, during the time they occupied that space in your plant pursuant to this lease which is in evidence, whether or not it had any employees?

(Testimony of Daniel P. O'Keefe.)

A. Whether or not the Pioneer had any employees?

Q. The Pioneer had. A. Yes.

Q. Do you know how they went to and from work in that portion? A. Yes.

Q. How did they do that?

A. To and from, you mean the door they went in or means of conveyance or the door they went in?

Q. Yes.

A. I am not sure. I think they all came in on Los Palos Street. I don't know what number there. There are two doors there on Los Palos. Whether they all came in one or whether they used both doors, I am not sure. I think they used just one door there where they had their time clock.

Q. Was that time clock on the Los Palos side, do you recall?

A. Well, I say where they had the time clock. I think I [970] recall seeing a time clock there. I am not sure. I wouldn't say for sure.

Q. Isn't this a fact, Mr. O'Keefe, I am not trying to argue with you, that during the war period all employees came into the O'Keefe and Merritt employees' entrance because that is where you had the guards located, both Pioneer and O'Keefe and Merritt? A. Oh, no.

Q. They came in on Los Palos?

A. Yes. There may have been two or three came in our way, but I don't think so. I don't think any of them came in our way. They had to

(Testimony of Daniel P. O'Keefe.)

have an O'Keefe and Merritt badge to get in our way.

Q. I will ask you if you know a person by the name of Ben Platz. A. Yes.

Q. Prior to the origination of Pioneer, do you know what position, or rather, do you know by whom Ben Platz was employed?

Mr. Collins: Just a moment. May we have a little more foundation laid. I would like to know how far prior to the formation of Pioneer.

Mr. Nicoson: Well, immediately prior to the formation of Pioneer.

Mr. Garrett: How do you spell his name? [971]

Mr. Nicoson: P-l-a-t-z. That is the way I have it here. Or it may be P-l-a-a-t-z. Might be correct.

The Witness: I didn't know there was a "z" on his name, but then maybe there is. I didn't know how to spell it. He used to work for us, at one time, if this answers your question. He quit and went with some public accountant and whether he came back to work for us a while or not, I don't remember, or whether he went directly from the public accountant's office to the Pioneer, or whether he worked a while for us in the meantime, I am not sure. I don't think he did. I think they got him back from the public accountant.

Q. (By Mr. Nicoson): Do you know a person by the name of Leo Munchoff, I think it is spelled M-u-n-c-h-o-f-f? A. Yes.

Q. Immediately prior to the existence of Pioneer

(Testimony of Daniel P. O'Keefe.)

Electric Company, was he employed by O'Keefe and Merritt?

A. I don't think so. He was years ago, but I don't think——

Q. Do you know a person by the name of Joseph Spallino? A. Yes.

Q. Immediately prior to the existence of the Pioneer Electric Company, was he employed by O'Keefe and Merritt? A. Yes.

Q. In what capacity was he employed?

A. I don't remember whether—there were so many things happened since then. He was either a foreman or a [972] general foreman or assistant superintendent, I don't know which.

Q. Isn't it a fact that he was assistant to Bill O'Keefe who at that time was the plant superintendent?

A. I would not be surprised. I am not sure now. No, I think not. I think Mark Smith was assistant at that time. He was a foreman, I guess.

Q. Do you recall what department he was foreman of?

A. No, I don't. He was at one time in the plating department. I guess probably—that is where he was, in the polishing and plating department.

Q. And after Pioneer came into existence, Joe Spallino went to work for them, isn't that correct?

A. That is right.

Q. Do you know what capacity he functioned in for the Pioneer?

(Testimony of Daniel P. O'Keefe.)

A. I think he was called superintendent. Whether he—I think that was his title.

Q. Do you know a person by the name of William Durant? A. Yes.

Q. Immediately prior to the existence of Pioneer Electric Company, was Mr. Durant employed by O'Keefe and Merritt Company? A. Yes.

Q. And in what capacity? [973]

A. Chief engineer.

Q. After the Pioneer Electric Company came into existence, did he go to work for Pioneer?

A. No.

Q. He stayed on the O'Keefe and Merritt payroll? A. Yes.

Q. As a matter of fact, he was your contact man with the U. S. Signal Corps; wasn't he?

A. Well, I don't know—no, you wouldn't call him the contact man. He was our chief engineer with the Signal Corps. We had a contact man.

Q. He did do business for O'Keefe and Merritt with the Signal Corps; isn't that right?

A. Yes.

Q. Now, I will ask you, if you know, when the Pioneer Electric Company came into existence, whether or not any of the employees of O'Keefe and Merritt, other than those I have just asked you about, went to work for Pioneer Electric?

Mr. Garrett: May I call your Honor's attention to the fact we are now past 4:00 o'clock. May we recess at this time?

Mr. Nicoson: We have had one recess.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: We just recessed a few minutes ago. Did you want to make a phone call or something?

Mr. Garrett: No, your Honor. How long are we going to [974] go this afternoon?

Trial Examiner Kent: Until 5:00. We have had a rather short day. We were late in getting started.

Mr. Garrett: Is seems long to me.

The Witness: Some employees that worked for us went over with Pioneer?

Q. (By Mr. Nicoson): Yes. A. Yes.

Q. Do you have any way of knowing how many went over there?

A. No, I have no way of knowing. I could have it looked up.

Q. I see. You have no present recollection of the number of employees? A. No.

Q. Could you make an approximation of the number? A. No.

Q. Now, you have before you Board's Exhibit 13 which, I believe, you described as a lease between O'Keefe and Merritt and the Pioneer Electric Company. I will ask you after the Pioneer *became* into existence, up to and including V-J Day, if you had any other written contracts with the Pioneer Electric Company? I mean by that the O'Keefe and Merritt people, if you recall.

A. I think we did, yes.

Q. May I ask you, Mr. O'Keefe,—I don't think we will be [975] able to get rid of you today—

(Testimony of Daniel P. O'Keefe.)

when you come back in the morning, if you have had an opportunity tonight to search your files and see if there is such a contract in writing, if there is, will you please bring it in in the morning?

A. Yes.

Q. Thank you, sir. Do you know a person by the name of L. J. Mitchell? A. Yes.

Q. Immediately prior to the Pioneer Electric Company came into existence, was Mr. Mitchell employed by the O'Keefe and Merritt Company?

A. Yes.

Q. After Pioneer came into existence, he went to work for them; is that correct? A. No.

Q. Do you know whether or not he ever went to work for Pioneer Electric Company?

A. Never did.

Q. At least, I want to call your attention to this, so that the record will show that I am not trying to trap you. On this certificate of Business Fictitious Firm Name, being the third one, the name of L. J. Mitchell appears? A. Yes.

Q. Is that the same L. J. Mitchell we are talking about? A. Yes. [976]

Q. He is still employed by O'Keefe and Merritt?

A. Yes.

Q. Now, on or about August 17, 1945, the U. S. Signal Corps terminated its contract with O'Keefe and Merritt; isn't that right? A. Yes.

Q. I think at that time you had with the Signal Corps, at least you had four contracts outstanding; is that right? A. I don't remember.

(Testimony of Daniel P. O'Keefe.)

Q. You don't remember? A. No.

Q. All right. I will ask you after August 17th, if you know, whether this wall around the Pioneer Electric Company was removed.

A. I don't know just when it was removed. It is not there now.

Q. I see. Then it is your testimony you can't tell how soon after August 17th, if that is the date, it was taken down, but it isn't there now?

A. That is right.

Q. With respect to Joseph Spallino, after August 17th did he ever again become an employee of the O'Keefe and Merritt Company?

A. Yes.

Q. Could you give us about the time he became an employee [977] of the O'Keefe and Merritt Company? A. No.

Q. It was sometime after August 17th?

A. Between that and the first of the year, I would say, but I don't know just when.

Q. In what capacity was he employed?

A. Superintendent.

Q. Superintendent. Did he replace Mr. W. J. O'Keefe? A. Yes.

Q. Mr. W. J. O'Keefe, did he remain in the service and employ of the O'Keefe and Merritt Company? A. Yes.

Q. What capacity did he thereafter occupy?

A. He was, I would say, in the sales end.

Q. Sales? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. Did he have a title?

A. No, I guess not.

Q. After the Pioneer came into existence and up to V-J Day, did the Pioneer, so far as you know, have any machinery within that enclosure?

A. Yes.

Q. And after the contract termination date, do you know what happened to that machinery?

A. No. [978]

Q. If I suggest to you it was moved out of that portion and part of it into the parking lot across the street from Calzona, would that refresh your recollection about it any?

A. I would imagine——

Mr. Garrett: Just a minute. That is objected to as leading. If he suggests, as he starts the question, his question is leading and suggestive.

Mr. Nicoson: At least I didn't try to conceal it.

Mr. Garrett: No, you were frank about it. It is leading and it has a label on it.

Mr. Nicoson: I asked if that would refresh his recollection.

Mr. Tyre: I think that is proper, your Honor. He has already asked him whether he remembers. He says he doesn't. Now, I think you are entitled, in order to refresh his recollection, to ask him a leading question. [979]

Trial Examiner Kent: I wonder what the materiality is.

Mr. Tyre: Just a minute, your Honor. I am

(Testimony of Daniel P. O'Keefe.)

going to request that Mr. Garrett withdraw the silly remark that he just made.

Mr. Garrett: I don't know why you should be concerned about that, Mr. Tyre.

Mr. Tyre: It is a ridiculous statement to make.

Mr. Nicoson: Since I didn't hear it, I am completely in the dark.

Trial Examiner Kent: I didn't hear it either, and I think the reporter said she didn't hear it.

Mr. Collins: I will object to the question upon the ground it is immaterial, as to whether Pioneer moved their machinery or moved to Calzona Street or some other property. I don't see the materiality of that.

Trial Examiner Kent: He may answer if he knows.

The Witness: Well I don't know. I suppose they sold some of it, and maybe they moved some of it across the street. I don't know. I haven't the slightest idea, so I can't answer.

Q. (By Mr. Nicoson): Do you know, Mr. O'Keefe, who the owner of that machinery was that was in the Pioneer Electric Company space?

A. Well, I assume that it was, that it belonged to the [980] Pioneer Electric Company. They might have borrowed a tool or two from us, of unimportant small consequence, but I would presume that the rest of it they owned.

Q. Isn't it a fact, sir, that in about October of 1945 you purchased all or a part of that machinery from the United States Signal Corps?

(Testimony of Daniel P. O'Keefe.)

A. I didn't know the United States Signal Corps owned it or that we bought it. I didn't even know they owned it. I presumed it belonged to the Pioneer Electric.

Q. Is it then your testimony that you know nothing about whether or not that machinery was purchased by the O'Keefe and Merritt Corporation?

Mr. Garrett: Objected to as already asked and answered.

Trial Examiner Kent: What was that question?
(Question read.)

Trial Examiner Kent: No, it was the remark of Mr. Garrett. I think he made an objection.

Mr. Garrett: Objected to as already asked and answered and argumentative.

Trial Examiner Kent: The objection will be overruled. He may answer.

The Witness: No, I don't know.

Q. (By Mr. Nicoson): I will ask you, Mr. O'Keefe, if on or about October '31, 1945 the Los Angeles Times carried an advertisement of the sale of surplus property. Did that [981] come to your attention, if it was a fact?

A. I didn't know about it.

Q. I also ask you if you know whether or not thereafter O'Keefe and Merritt put in a bid in the sum of \$80 for this surplus property.

A. I don't know.

Q. And I will ask you thereafter if the U. S. Signal Corps did not advise you that the bid was unsatisfactory.

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: This is all leading. It is all cross examination. Maybe Mr. Nicoson has got some information which permits him to cross-examine; maybe he is surprised; maybe he is just trying to degrade this witness and argue with the witness who is his own witness.

Mr. Nicoson: I object to any such thing, degrading the witness. I think that is silly, Mr. Garrett.

Mr. Garrett: You are asking your own witness questions which would tend to impeach his integrity, aren't you?

Mr. Nicoson: I am trying to establish a fact.

Mr. Garrett: He says he didn't do something, then you say——

Mr. Nicoson: No, he didn't say he didn't do anything, he said he didn't know about it.

Mr. Garrett: I appeal to the Court to rule that the examination should be as on direct, not argumentative, not leading, not contentious, by any of us when we produce our [982] own witnesses unless we make a showing of surprise.

Mr. Collins: Mr. Nicoson, why don't you ask the witness who would know in his organization? He has a purchasing agent who would very likely know about this.

Trial Examiner Kent: I will sustain the last objection.

Q. (By Mr. Nicoson): Well if anything like this did occur with the O'Keefe and Merritt Company do you know who within your organization would know that?

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: Just a moment. That is leading and suggestive. I object to it on that ground.

Trial Examiner Kent: No, I can't see that is objectionable. I will overrule the objection. He may answer.

A. Well, there might be several people that would handle it, might take it up with Mr. Merritt or handle it without taking it up with him. They have authority to handle that kind of a transaction without taking it up with Mr. Merritt, and they never take it up—I mean I would say that they would not take it up with me anyhow. I wouldn't know about it.

Q. (By Mr. Nicoson): It would not normally come to your attention?

A. No. It might come to Mr. Merritt's attention and it might be handled without calling it to his attention.

Q. Do you know, Mr. O'Keefe, at V-J Day or rather on August 17th or thereabouts whether there was any unfinished [983] work in the Pioneer Electric portion of the building down there?

A. Do I know was there any unfinished?

Q. Unfinished work on generators or whatever the Pioneer was doing then at the termination of the contract.

A. Well, I couldn't say I know from my own knowledge of seeing it, but I am sure there was.

Q. Do you know what became of the work, the parts and the work that was left there, if there was any?

(Testimony of Daniel P. O'Keefe.)

A. Well, I think a great deal of it is either in this lot that you talked about across from Calzona or has been disposed of probably.

Mr. Nicoson: Do you have those speeches?

Mr. Collins: Yes. Here they are.

Mr. Garrett: There are three speeches, each one of which contains a matter of six pages, three of them about that length, one of them three. I wonder whether we could not produce those for the Board's attorney and recess until in the morning so they could be finally disposed of by him and he could base his cross-examination thereon. Obviously we are getting into——

Mr. Collins: I have offered to stipulate that those speeches were made by Mr. O'Keefe. There may have been a few variations from the script.

Mr. Garrett: Then too I should like to have copies [984] of those speeches, and I think possibly they can be obtained from the company if we put them in and then withdraw them for the purpose of making copies.

Trial Examiner Kent: If they are admitted, yes, you may have the privilege of withdrawing them.

Mr. Garrett: They have considerable bearing, I understand, in relation to this case. We all want to study them over carefully before they are admitted. I would not be in a position to object until I have read them thoroughly and studied the problem.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I think I rather like the suggestion to recess, to be given an opportunity to look these over, because as Mr. Garrett has said they are voluminous and they are something I would like to have the opportunity to go over carefully. If it is agreeable to counsel for the company, I would be agreeable to taking a recess at this time for the purpose of going over them, because it will take me some time to read them.

Trial Examiner Kent: Very well. We will recess until 9:30 in the morning then.

(Whereupon, at 4:20 o'clock p.m., March 20, 1946, the hearing in the above-entitled matter was adjourned until 9:30 o'clock a.m., March 21, 1946.) [985]

Thursday, March 21, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: I note all counsel are not here yet. It is approximately a quarter of 10:00 Counsel for the Board and counsel for the respondent, Mr. Collins, are here, and I think we better proceed.

Mr. Tyre: The record may as well show counsel for the C.I.O. is also here.

Trial Examiner Kent: Pardon me, Mr. Tyre. The record may so show.

Good morning, Mr. Garrett. I just made a statement on the record that we would proceed with the counsel present. But so far nothing has taken place.

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: I think I requested before, Mr. Trial Examiner, that any time I am not here at the opening hour I wish your Honor would proceed without me. I have made it perfectly clear, I think, on the record, that it is impossible for me to appear for the hours that your Honor has insisted on.

Trial Examiner Kent: Very well. I am glad to have that statement on the record.

Mr. Nicoson: Mr. O'Keefe.

DANIEL P. O'KEEFE,

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified as follows: [990]

Direct Examination

(Continued)

Q. (By Mr. Nicoson): Mr. O'Keefe, I show you a document which is in evidence as Board's Exhibit 13, being the lease between the O'Keefe and Merritt and Pioneer Electric Company on the 16th of November, 1942. I called your attention yesterday to the fact under the place for the Pioneer there appears to be no signature.

Mr. Collins has handed me another copy of that document. I will ask you to examine it and state whether or not there is a signature on that for the Pioneer Electric Company, lessee. A. Yes.

Q. That is the signature of W. J. Boyle; is it not? A. Yes, sir.

Q. Are you acquainted with Mr. Boyle's signature? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. And that is his (indicating)? A. Yes.

Mr. Nicoson: May we have a stipulation that the exhibit now in evidence be amended accordingly?

Mr. Collins: I will accept that stipulation.

Mr. Nicoson: Did you hear that, Arthur?

Mr. Garrett: I will stipulate.

Trial Examiner Kent: The record may so show. It might be in order, I do not think it would be objectionable to [991] physically write the signature non pro tunc in the exhibit as admitted.

Mr. Nicoson: I think the exhibit should be amended so as to show that confirmation, yes.

Trial Examiner Kent: Very well.

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 15, for identification.)

Q. (By Mr. Nicoson): Mr. O'Keefe, about the time of the National Labor Relations Board election, which we have stipulated here occurred on November 20th, you made some speeches or talks to the employees, did you not? A. Yes.

Q. I hand you a document composed of five sheets which, for the purpose of identification has been marked Board's Exhibit 15, and ask you to state whether or not that is the transcript of one of the talks that you made. A. Yes.

Q. It has also been stipulated here that the first of these talks occurred on November 19th, the second occurred a week later, and the third occurred about February 1st. That, of course, is a stipulation of counsel and I am bound by it, but if you do

(Testimony of Daniel P. O'Keefe.)

not think that is correct, you have a right to straighten us out about it.

A. I don't remember any of the dates. [992]

Q. And so according to our stipulation this is the speech that you made on November 19th, which is the day directly preceding the election. Does that agree with your recollection?

A. Yes. It was before the election. I don't know whether it was the day before or what.

Mr. Tyre: Pardon me. May I have that answer read back?

(The answer was read.)

Mr. Nicoson: I am not trying to alter the stipulation. I am just trying to find out if we were right.

Q. (By Mr. Nicoson): Did you make any departures from this speech that you now recall or this talk?

A. Well, I wouldn't say. It all depends on what you mean by departure. I would not be looking at this, I mean I would not read this the same as if somebody else had written it for me. I wrote this just to go by, and I would read for a part of the time and then I would be looking at the audience or the employees part of the time, and the phraseology might be somewhat different.

Q. Does this represent substantially what you said at that time? A. Yes, I would say so.

Mr. Nicoson: I offer it in the record as Board's Exhibit 15.

Mr. Collins: No objection.

Trial Examiner Kent: It may be admitted.

(Testimony of Daniel P. O'Keefe.)

The document heretofore marked as Board's Exhibit No. 15, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 15

I realize that selecting a union to bargain for you is your own affair and for this reason, I have not interfered with the activities of the different groups who have been active in organizing for the different unions. However, some of the old timers around here asked me to express my views, inasmuch as they thought I had an opportunity to evaluate the different unions and pass this information along to the men. I suppose that some of you will feel that I am butting in but, after all, I am expressing my opinion and when it comes to voting, the ballot is secret—you can suit yourselves.

First of all, I can say that I still think all unions are bad—the A. F. of L. as evidenced by the trouble they caused in the moving picture strike—the C.I.O. for the many disturbances they have created in the short period of time they have been in existence, and while there are probably some good men connected with both unions, nevertheless I think a lot of them want to make a living without doing any work themselves. But that is not the issue now. The question for you to decide is which of the two, let's say evils, is the lesser or will there be more benefits from one than from the other.

From my point of view, the C.I.O. boys are making a lot of promises that they know cannot be ful-

(Testimony of Daniel P. O'Keefe.)

filled, figuring that once they are in, then there is nothing anybody can do about it. For instance, they ask you to vote C.I.O. for \$1.65 per hour minimum for machinists, \$1.95 per hour minimum for tool and die makers, \$1.55 per hour minimum for welders and \$2.00 per hour guarantee for molders and core makers. Now the C.I.O. have been the union representing the U. S. Steel Corporation, Boyle Manufacturing Division, for several years. The rates called for in their contract and paid by the Boyle Mfg. Company are—tool room machinists, Grade A, 1.30½, Grade B, \$1.15½, Grade C, \$1.00½—tool and die makers, Grade A, 1.40½—Arc welders, required to read blue prints and do their own lay out work, Grade A, \$1.20½, Grade B, 1.05½. Inasmuch as I don't know of any grey iron foundries that are operating under a C.I.O. contract, I didn't get a rate on molders. I think most of the grey iron foundries in Los Angeles are operating under an A. F. of L. contract. Now, as you will see, there is a big discrepancy between what the C.I.O. are getting for the men they represent and what they would lead you to believe they will get for you.

In addition to this, the C.I.O. would lead you to believe that they would ask for and get four week's Christmas bonus for 5 & Over members and two week's for one year and over, but they have been representing the men at Boyle for a long time and I understand they don't get them any bonus. Now the C.I.O. have made a lot to do about this Christmas bonus, saying you earn it and it should be part

(Testimony of Daniel P. O'Keefe.)

of the contract and so on. The truth of the matter is, it has nothing at all to do with wages. We have endeavored to pay the going rate of wages in this community for whatever your job classification is—then if we found we had a good year, we wanted to give you something as a Christmas present out of the profits. However, if we have a poor year, we don't expect to down in our pockets and make you a Christmas present which amounts to about \$20,000.00. I am sure that you have never complained about the size of the Christmas bonus—I am sure you are not the kind of people who would accept a present and then say it wasn't enough. However, these people who want to represent you tell you they are going to do that very thing. I do not think you would appreciate that kind of representation. I understand the 5 & Over Club are going to give me a turkey for Thanksgiving. I will accept it as a gift and surely appreciate it, but if I am not here and somebody representing me accepts that turkey instead of saying "Thanks" tells the 5 & Over Club that they have been doing this for several years, and, by gosh, this year it should have been two turkeys, I will surely see that he does not represent me again.

The C.I.O. states that they have been informed that we made 50 and 100 percent profit on our capital investment during the war and have a back log of orders equaling many millions of dollars. I do not think anyone working in our office gave them such information. As far as the profit is concerned,

(Testimony of Daniel P. O'Keefe.)

I think I only have to say this statement is ridiculous. However, we did make money during the war and I think you in the plant did fairly well too. The only people who suffered were the white collar workers or what might be termed office help, who did not do so well. But the difference between you and the company is that whatever you made you got in cash—whatever the company made, it invested in new and up-to-date machinery with the thought in mind that a lot of firms are going into the manufacture of appliances, firms such as the Consolidated Air Craft, Vultee, etc., and we knew unless we had the up-to-date equipment for very operation, we would not be able to hold our place in the industry, which of course would mean less work, and unless the firm makes money, it cannot pay good wages. We also invested in new lavatories for your comfort, fixing up new cafeteria and locker rooms, new 5 & Over Club and other things that you see and know takes money. In other words, there are no outside stock holders in the O'Keefe & Merritt Company, nobody howling for dividends; therefore, what we made we put back in to make this a better place for us all to work.

Now in one of the pamphlets passed out here, the C.I.O. state the No Strike Pledge of the United Steel Workers of America C.I.O. was kept inviolate during the entire war period. In this connection, I would like to read you just a little piece out of last Thursday's Herald. * * * Now, I don't know how many hours time was lost with each work stop-

(Testimony of Daniel P. O'Keefe.)

page—in some cases we know it was considerable. However, just to bring out my point, I would like to assume that the average loss was two hours each time. I think you would agree that this would be about a minimum average. 773 times two hours is 1546 hours in four years. Now if the wages were \$1.00 an hour, this amounts to \$1,546.00. I don't think that anyone would appreciate having \$1,546.00 taken out of his pay over a period of four years, but the thought I wanted to give you was that these boys from the C.I.O. make some pretty loose statements.

I understand the A.F.of L. had several meetings which were attended by some of you and I have been informed that they promised to get you the going rate in this industry for whatever job you were doing and while this probably did not sound as enticing as the big promises made by C.I.O., nevertheless it shows that they were honest and playing the game fair with you. As you know, the A. F. of L. tried to organize us a long time ago. We opposed it then on the grounds that they did more harm than good. I am not sure today whether or not that is still true, for the reason that I do not know how much trouble they will cause us. However, if they allow you to have your own local and you select the right men to head that local, I believe you can keep some of those who might be inclined to cause trouble from rocking the boat and get along harmoniously without work stoppages, which are a bugbear as well as a loss to management and em-

(Testimony of Daniel P. O'Keefe.)

ployees. From the management's standpoint, we know that in order to keep our place in the industry, it is necessary for us to run larger quantities of the different numbers than we did before the war. Therefore it is necessary for us to do more business in the northern part of the state, and as you probably know, we never were able to do much business in this territory, due to the fact that the men who connect the stoves belong to the A. F. of L. Union, the plumbers to whom we tried to sell water heaters all belonged to the A. F. of L., when we tried to sell floor furnaces, we ran against the building trades, who of course would not work on the job if the furnaces were installed by other than A. F. of L. men. Therefore it is reasonable for us to expect to do a lot more business if our merchandise is acceptable in the northern territory. That is just as true in this territory when it comes to water heaters and floor furnaces. We never were able to do much business with these items for the same reason.

Another reason that I would be partial to the A. F. of L., if I were an employee voting, is the fact that we are so closely identified with the building trades. If you are a carpenter and work here, you of course know that we are not going to need a lot of carpenters after the reconversion period; therefore, it would be necessary for you to drop the C.I.O. and join the carpenters' union before you could get a job in the building trades. As I understand it, practically all of the grey iron foundries that are

(Testimony of Daniel P. O'Keefe.)

union are affiliated with the A. F. of L. Now, if you are a molder belonging to the C.I.O. union, you would not have an opportunity to get work in a union shop if you found it necessary to make a change. Then too, wherever the stove industry is represented by a union, I believe it is always A. F. of L., that is such firms as James Graham making Wedgewood stoves, Western Stove Company making Western-Holly, and I believe Thermador, who make an electric range, are all affiliated with the A. F. of L. Therefore, if you are a stove mounter and left here, the chances are you would have to join an A. F. of L. union before you could go to work for another stove company. This is true whether you are a stove mounter, an enameler, press operator, shearman or whatever. It would therefore seem logical that if you are going to have a union represent you, you would have one that is familiar with the stove industry, because after all, that's what you want is as good a deal as the boys are getting in any other stove factory and I think that most of you will agree that we will try to give you a better deal than that given by others in the industry.

As far as piece work is concerned, I have had Mr. Collins take up with the different branches of the A. F. of L. and they assure us that if the employees wish, they can continue on a piece work basis with the union hourly rate guaranteed, which we think is the only fair way to work on production. If a man is capable and willing to do more work than some one else, he should get more pay.

(Testimony of Daniel P. O'Keefe.)

Now on the ballot there are three places to vote—one for the C.I.O., one for the A.F.of L. and one for neither. I can just imagine that there are a number of you who would be very glad to vote for neither, but I want to ask you as a favor to pass this up and vote for one or the other. The fact that you vote for one or the other does not mean that you will have to join that particular union or any union, but it does mean that you are going to have one or the other in here to bargain for you if you wish to join. And as you know, nobody is going to know how you vote—we will get along as best we can with whomever you select to represent you, as I believe you will always use good judgment in selecting your representatives. Therefore, again I urge you to be sure and vote.

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 16, for identification.)

Mr. Garrett: Does that exhibit have any date on it?

Mr. Nicoson: Pardon?

Mr. Garrett: Does it bear any date, that transcript?

Mr. Nicoson: No. According to our stipulation, it should be on the 19th, and according to his recollection that was about correct.

Q. (By Mr. Nicoson): I hand you a second document consisting of six sheets, ask you to exam-

(Testimony of Daniel P. O'Keefe.)

ine it and state if that is not the transcript of the second speech that you gave at or about that time.

A. Yes, I think so.

Q. In like manner, does that represent substantially what you said at that particular time?

A. Yes, with the same exceptions, that I might have used different phraseology at times.

Q. That is right, but the substance is here?

A. That is right.

Mr. Nicoson: And this, Mr. Collins, is the speech that we stipulated took place about a week after the election is it not? [994]

Mr. Collins: Yes.

Mr. Nicoson: I now offer this for the record as Board's Exhibit 16.

Trial Examiner Kent: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 16, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 16

First of all, I want to apologize to the piece workers for asking you to take the time to attend this meeting. The firm will be very willing to pay for this time if you will take it up with your foreman.

Inasmuch as a lot of the 5 & Over members are in attendance, I would like to take this opportunity to thank you for the lovely turkey you set me for Thanksgiving. It sure was a dandy and the family and myself enjoyed it very much; in fact, we will

(Testimony of Daniel P. O'Keefe.)

enjoy it again several times before it is gone—it was a wonderful big bird.

There have been so many rumors circulated since the election last Tuesday, I thought maybe you would like to get some of the facts. First of all, let me say we have no fight with the CIO—their business is to sell memberships—they won the election here, which means that you are going to pay them to bargain for you. That is their job and while I hoped you would vote for A. F. of L. and gave you the reasons why, we don't have any friends in either organization. We didn't make any deal in advance with either one of them. Inasmuch as I was sure A. F. of L. would win the election, I sent for the organizer and asked him two questions—first, would we be able to operate on a piece work basis under an A. F. of L. contract, and he replied that we would, providing we guaranteed the Union hourly rate. Then I asked him if it would be necessary, under their contract, for our veterans who returned from the war to join their union and I told him that we simply would not sign a contract that made this necessary and he told me that he was sure it could be arranged. I didn't discuss wages, hours, working conditions or anything else with him any more than I did with the CIO, for the reason that I have sat on the Labor Panel on a number of cases in the past two years, as the member from Industry, and I know that when these things are thrashed out pro and con, you wind up with a fair contract. Whether it is with A. F. of L.

(Testimony of Daniel P. O'Keefe.)

or CIO, you can figure you are going to have practically the same kind of a deal that other firms in the same line are getting. That is, in our case, the Continental Can Company across the street, Boyle Manufacturing Company or the American Can Company all have shear work and press work, welding work, machine work and so on, just the same as we do. They are all working under a CIO contract and we know in advance we would have to accept practically the same terms and conditions. Or if CIO found that the Western Stove Company, who are operating under an A. F. of L. contract, had something that was a little better here or there, this would be included in the contract, and naturally we could not or would not take exception to them. The same thing is true if the A. F. of L. had won—they would present a contract such as they have with the Western Stove Company, or if they discovered that the CIO contract with Boyle or Continental Can paid a little more for certain jobs, they would point this out and insist on it being written into their contract. Therefore the wages, hours, conditions, etc. were not given any thought, as far as we were concerned. We do want our employees to have as good a deal here as they would get any place else in the same line of business.

As I explained to you last Tuesday, we are, you might say, affiliated with the Building Industry; that is, our floor furnaces are all installed in new buildings; our wall heaters are all installed in new buildings; water heaters, if we made any quantity,

(Testimony of Daniel P. O'Keefe.)

would necessarily be installed in new buildings. I don't need to tell you who controls the new buildings. If you didn't belong to the A. F. of L., you could not get the job shoveling out the dirt after the plasterer was through—let alone anything more important—if you did it for nothing, unless you belonged to the A. F. of L. union. Therefore, it is absolutely impossible for us to continue in the furnace or wall heater business. Now on water heaters—there are always a few replacements sold by stores other than plumbers, where they can find a plumber who can get the permit and connect. This is the kind of business we used to get a little of. In other words, we made a few hundred water heaters per month and sold them through these sources. Due to the fact that we made so few, it was not economy to spend a lot of money tooling up to get on a production basis; therefore, our boilers cost us more to make than we can buy them for from an outside source. So, the reason that I hoped you would vote for the A. F. of L. last Tuesday was that with the advertising we have done, our name is well known and we believe we could sell more water heaters than any other water heater manufacturer in Southern California, if the plumbers would buy and install them in new buildings. However, as far as they are concerned, our water heaters might just as well be marked "Made in Japan" as not to have the A. F. of L. label on them, which means that unless we made other arrangements for manufacturing

(Testimony of Daniel P. O'Keefe.)

these, we are not going to do much in the water heater business. We had already turned this department over to Bill Durant, who has done such an outstanding job with the Government during the war, to take charge of design, tooling up, manufacturing and selling. However, since the election, Mr. Durant will not accept, inasmuch as he feels he cannot afford to be a failure at anything he undertakes and he figures that selling water heaters made by CIO men to A. F. of L. builders is a lot harder than selling refrigerators to the eskimos, and he would rather work on something along lines of less resistance.

But I might say that I reconciled all this, inasmuch as it was your wishes, but Saturday in playing golf with Glenn Doughty, a contractor friend of mine, who built thousands of houses before the war and is now getting ready to build 5000, said: "I saw in the paper where your plant has gone CIO" and I said "Yes" and he said, "Well, I am awfully sorry Parkie, because you know I wanted to give you our business, but practically all of the building contractors in Southern California (I think it was 300) have signed up with A. F. of L. that they will not employ anything but A. F. of L. labor in their construction and that they will not do business with subcontractors who do not employ A. F. of L. labor. So therefore, there is just nothing I can do about it and I am awfully sorry." Last night we were out to Phyllis's for dinner and Matt Flynn, a building contractor who builds by the hundreds (in fact

(Testimony of Daniel P. O'Keefe.)

he used to have several hundred jobs going at one time) was there. He has just bought 800 acres out near La Canada and is going to subdivide, build and sell. Now 800 acres means a lot of houses and he being a friend of the family, naturally he would hardly have to ask for the business, but here he is apologizing to his friends because he can't give them the business and explaining the reasons why. While it hurts us like everything to lose the business, I might also say it is humiliating when these fellows also say, "You must have the dumbest clucks in the world working for you when they are in the Building Trades Industry and vote CIO." All we can do is to hang our heads—there is not much we can say. However, I said, "Don't say that—you are talking about my friends."

You know after all, there is only a little difference between success and failure—that little difference comes in exercising good judgment. If you will notice, the people who are successful have usually done the right thing at the right time, where the fellow who has failed will say, "Well, I made a mistake—I bet on the wrong horse," as if it were a game of chance, when the truth of the matter way, it was just bad judgment. I would like to ask—how many of you, if you were in the plastering business, would join the CIO and expect to make a living. We are almost as closely affiliated with the Building Trades as the plasterers are. This never was as true before as it is now, for the reason that the FHA will now include in the financing of houses

(Testimony of Daniel P. O'Keefe.)

the appliances, such as the range, water heater, etc. This means that the builders are going to install the ranges along with the other appliances. John Carlson, our salesman who was going to be in charge of the San Francisco office, which we were going to open, can tell you, if he is here today, that you reduced the possibility of range sales in Northern California at least 70 per cent. Now, under these conditions, it will not pay us to open a branch in San Francisco, unless we can make some kind of arrangements for the manufacture of our ranges that will be satisfactory to the A. F. of L.

It seems a shame that this should come at a time when I think we have a design that is so much ahead of anything on the market; when we are making dies and equipment second to none in the United States; when our pickling and enameling rooms are going to be the acme of perfection; when we already have a second enameling oven practically ready to be shipped. While we were going to have to sell our ranges at the price in effect before the war, nevertheless we figured that with the quantities of one number that we could run at a time, we could reduce the cost enough to still make money. This, together with three or four thousand water heaters a month and as many furnaces, a great number of wall heaters, etc., the future looked brighter than it ever did since we have been in business, when all of a sudden, I presume spurred on by big promises and maybe a desire to do some

(Testimony of Daniel P. O'Keefe.)

harm, a majority of you, through bad judgment, poor information or some other reason, have thrown up a curtain that makes things darker than they have ever been. Now why you should do this, or who among you that wished to work a hardship on the rest, I don't know. I cannot imagine that it would be fellows like Louie Ortega, inasmuch as he knows I have kept him on the job several times when he was to be let out, and he made \$1.80 per hour for the past two years, due to our piece work system, where the rate for welders would could read blue prints was \$1.20 per hour, in some plants with CIO contracts. It surely could not be Felix Ruiz, because he knows he was let out several times and I made the foreman take him back and he made \$1.80 per hour for the past two years, for the same reason and same circumstances. It couldn't be a fellow like Benny Pardo because, after his accident, when he was granted \$800.00 by the Industrial Accident Commission, I told Mr. Collins to go right up there and see if we could not have that amount increased, that I didn't think that was enough for all that Benny had suffered, and I believe that Mr. Collins had this amount raised to \$1300.00. And then we were instrumental in suing Parker Rust Proof Company and secured \$1400.00 more, which was turned over to Benny. I could not be Chuy Cano, because he knows that he has been let out many times in different departments and that I always saw to it that he got back on the job. And I could go on and name a lot of people who should have

(Testimony of Daniel P. O'Keefe.)

the interest of the business at heart. Some years ago, when some of the retail stores objected to our merchandise because, they said, we had too many Mexicans and Niggers in our employ, I told them that these Negroes and men of Mexican parentage had been with us for many years and were very loyal and that we would close our doors, if necessary, before we would think of letting one of them out in order to secure more business. It surely is not members of the 5 & Over Club, whom we are still endeavoring to do something for. I can't think who would want to make it hard for this firm to do business by joining a union which is altogether foreign to our line and make it impossible in many cases for us to sell our products.

It has been rumored that there will be no more 5 & Over Club. We hope this is not the case. The 5 & Over Club is a fine organization, very dear to our hearts, and we want to be in a position to cooperate with you to keep it in existence. There have been rumors that we would now try to take the Christmas bonus and pension plan away from you. This is not the case. If we make money, you will get your Christmas Bonus—you have my word for that. The Pension Plan, as you know, is based on a profit sharing basis. That is, after the stockholders set aside 6 per cent on invested capital—which may be invested in new machinery, building or whatever—then you get an amount equal to 15 per cent of your yearly salary, if this does not exceed 25 per cent of the earnings.

(Testimony of Daniel P. O'Keefe.)

Now, I realize that the election is over—you have voted CIO. Even if you changed your minds tomorrow, we could not have another election for at least six months and maybe a year. Therefore, if we wish to do business with the builders and in San Francisco territory, we have two alternatives—to contract enough of our labor to a firm with an A. F. of L. contract that would be satisfactory to the A. F. of L., in order that they would take us off the unfair sheet—or to take advantage of the possibilities to sell this business to some one who has an A. F. of L. organization.

I know the old timers around here will realize what I am going through under present conditions. Give yourselves the two alternatives that I have referred to and you will see how hard it is to sleep under these conditions. You and I have been together for a long time, some of you over 20 years. There is nobody in the world that I can feel as much at home with as I do with you and to think that anything would come up now that will sever these relations is something that I cannot bear to think of. Mr. Merritt is discouraged and wants to sell out—Mr. Boyle, who had some dealings with the CIO in Alameda before the Boyle Manufacturing Company sold out, wants to sell out—but this business has been about the only thing that I could think of for the last 25 years. I get more pleasure out of getting down here in the morning and receiving a pleasant good morning from you than anything else I know

(Testimony of Daniel P. O'Keefe.)

of, and while I take a little time off to play golf, nevertheless if I had to give up either getting down here and seeing you every day or give up playing golf, I assure, from a pleasure point of view, I would quit the golf game. Although I am 60 years of age and at what is presumed to be the retiring point, I still want to stay here as long as I am able to toddle around and when the time comes when my opinion is not considered of any value, I hope you will not feel annoyed to see me on the job and tolerate my suggestions.

Thank you.

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: Mark this.

(The document referred to was marked as Board's Exhibit No. 17, for identification.

Q. (By Mr. Nicoson): I now show you, Mr. O'Keefe, another document consisting of three pages, ask you to examine it and state if that is not the transcript of the third speech or talk that you gave to the employees at or about this time.

A. Yes.

Q. And with the usual qualifications, does it contain substantially the substance of what you said at that time?

A. Yes.

Mr. Nicoson: This, Mr. Collins, is the speech we stipulated took place on or about February 1st; is that correct?

Mr. Collins: Yes.

Mr. Nicoson: I offer it for the record.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: Hearing no objection, it may be admitted.

(The document heretofore marked as Board's Exhibit No. 17, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 17

There are several reasons why I have asked you to be present at this meeting today.

First of all—We are supposed to report on the Pension Plan by the last of January but, due to the fact that the Government agencies have been so slow in their termination of contracts, I mean in taking inventory and figuring up what they allow us for this and that, we have been unable to close our books and, to be candid with you, we do not know how we came out for last year and possibly will not know for another thirty days or more. For this reason, I cannot tell you whether or not there will be money for the Pension Plan. However, I talk with Mr. Mitchell very often and he is under the impression that there will be money available for this Fund. I sincerely hope there is and that there will be sufficient money for this same purpose in 1947, but the time is slipping away and with lots of expense and no income, we hardly know what to expect at this time. However, if everybody puts his shoulder to the wheel when we do get rolling, I feel certain we will make up for lost time and come out all right.

Some time ago I talked to you about having another firm manufacture our products and pro-

(Testimony of Daniel P. O'Keefe.)

ceeded to work out what we felt would be a very satisfactory arrangement. These arrangements were to start February 1st, but inasmuch as this was the last day of the week, we changed the date to February 4th, which is Monday. Consequently, starting Monday, the Pioneer Electric Company will do all of the manufacturing for O'Keefe & Merritt Company. We will handle the sales, shipping and service; also, all new construction work.

In making these arrangements, we not only had ourselves in mind, but we also had your welfare at heart, so we made it a part of the contract that you would lose none of the advantages that you might have previously had with O'Keefe & Merritt Company, while participating in any new ones that will be available through the Pioneer Electric Company. While we know all of the members of the Pioneer Electric Company, of which Mr. Durant maintains the largest partnership interest, nevertheless we wanted to be doubly sure that there would be no change in your status; therefore it is all included in this contract, parts of which I would like to read to you, and anyone desiring to read the entire contract may do so by coming into my office. Inasmuch as the first part of the contract has to do with the leasing and amount of rent to be paid, and so forth, I will start reading where it affects you:

Contract

I want you to know that there is no one in the "doghouse". We did not make this agreement with

(Testimony of Daniel P. O'Keefe.)

the thought of punishing, much less eliminating anyone who has worked for us. I think you are all "swell" fellows and we are doing what we think is best for you.

It is my understanding that the scale of wages to be paid by the Pioneer Electric is considerably more, in many cases, than you were receiving from us. Therefore, inasmuch as I told you sometime ago that we did appreciate your cooperation and that we would not let you down, we will give you back pay from January 1st at the rate set by the new company, provided you remain in their employ for thirty days; that is, we will make this payment on March 1st to all employees who transfer to Pioneer Electric Company and are with them until that time.

I want to thank you on behalf of Mr. Merritt, Bill and myself, as well as everyone else connected with the Firm, for the splendid cooperation you have given us all these years and, if at any time we should go back to manufacturing our own products, I can assure you we will be only too happy to have you with us again.

While I am saying goodbye for Mr. Merritt and myself as employers, I hope we are not saying goodbye as friends. We will both be here every day as usual, designing and selling, and doing everything we can to keep the business going, which means permanent employment for all of you with the Pioneer Electric Company and this, we believe, is the thing that counts.

I know it is not necessary for me to introduce Mr.

(Testimony of Daniel P. O'Keefe.)

Durant of the Pioneer Electric Company. All of you have seen him do wonders around here during the war, and I am sure you all have the utmost confidence in him. Inasmuch as he is leaving for Washington Sunday and will not be here to greet you on Monday morning, he would like to say a few words at this time.

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: Your Honor, I have not had an opportunity, in compliance with the Board's rules and regulations, to have duplicate copies of those made. I would ask permission to be accorded that privilege and have one of your stenographers make copies so the two of them may go into the record.

Trial Examiner Kent: Yes, the three exhibits may be withdrawn for the purpose of making second copies of these exhibits.

Mr. Nicoson: Please mark this for identification.

(The document referred to was marked as Board's Exhibit No. 18, for identification.)

Mr. Nicoson: Counsel, I have been handed by Mr. Collins this morning a document of one sheet which I have had marked Board's Exhibit 18.

I am willing to stipulate that this is the transcript and substance of the speech or talk Mr. Collins gave to the employees sometime between the second speech of Mr. O'Keefe and the third speech, the exact date we are not able to fix any better than that.

Mr. Collins: Mr. Nicoson, in connection with this speech here, I should like to make the state-

(Testimony of Daniel P. O'Keefe.)

ment, for the record, that this is the speech that Mr. Spallino referred to that was made during the time the CIO was having those demonstrations out there.

I have lost my original transcript. I had my secretary [996] take this off from her notes, part of it. The part down at the last there, where I told them not to use any screw drivers or wrenches, and so on, and not to argue with the pickets and so on, I added with pencil notations at the time I made the speech; the latter part is to the best of my recollection. The first part is from her notes.

I think I can point out to you the part that is from my secretary's notes. Beginning with the sixth line from the bottom, that is the part I have added, to the best of my recollection. With that statement, I will accept the stipulation.

Mr. Nicoson: I think I can stipulate if you will just permit me to check that just a moment.

Please mark this for identification.

(The document referred to was marked as Board's Exhibit No. 19, for identification.)

Q. (By Mr. Nicoson): Mr. O'Keefe, I now hand you a document of three pages, which I have had marked for identification as Board's Exhibit 19, and ask you to examine and state, if you know, what it is.

A. Yes. This is the agreement we made with Pioneer Electric Company for the manufacture of our products.

(Testimony of Daniel P. O'Keefe.)

Q. That was entered into on or about the 2nd day of January, 1946; is that correct?

A. I don't remember the date on it, except by what I would [997] see there.

Q. It does show the date of the 2nd day of January, 1946? A. Yes.

Q. Is it your recollection that is approximately correct? A. Yes.

Q. Directing your attention to the third page of that document, and particularly to the writing under the words "O'Keefe and Merritt, a corporation, first party," is that your signature there (indicating)? A. Yes.

Q. And also directing your attention to the writing under the words "Pioneer Electric Company, a co-partnership, second party," is that the signature of Mr. W. G. Durant? A. Yes.

Mr. Nicoson: I offer this in evidence as Board's Exhibit 19.

Mr. Collins: No objection.

Trial Examiner Kent: It may be received.

(The document hereofore marked as Board's Exhibit No. 19, for identification, was received in evidence.)

(Testimony of Daniel P. O'Keefe.)

BOARD'S EXHIBIT NO. 19
LEASE AGREEMENT

This agreement, made this 2nd day of January, 1946, between O'Keefe & Merritt Co., a corporation, Hereinafter known as First Party, and Pioneer Electric Company, a copartnership, hereinafter known as Second Party,

Witnesseth:

That whereas First Party desires to lease to Second Party the manufacturing facilities of its plant located at 3700 East Olympic Boulevard, Los Angeles, California, which facilities are described in more detail hereinafter,

And whereas said First Party desires that all employees working for said First Party shall work with said Second Party, if they so desire, with no loss in wages or other advantages which they now enjoy,

And whereas said Second Party desires to lease the said plant and facilities and hire all employees, if they so desire, that are now working for First Party and maintain for them all benefits which they now enjoy, including seniority,

It is therefore agreed by and between the parties hereto as follows:

First Party does let and Second Party does hereby take that portion of the First Party's plant located at 3700 East Olympic Boulevard, Los Angeles, California, (excepting therefrom all front offices, service and warehouse) including the use of all

(Testimony of Daniel P. O'Keefe.)

machinery and other equipment and facilities located therein for a period commencing on the 31st day of January, 1946, and ending on the 31st day of December, 1946.

Second Party hereby covenants and agrees to pay to said First Party an annual rental at the rate of \$48,000.00 per annum, payable quarterly.

Second Party agrees to quit and surrender the premises at the expiration of said term in as good a state and conditions as they were in at the beginning of said term, reasonable use and wear thereof and damages by the elements excepted.

Second Party agrees that it will not assign this lease nor let or sublet the whole or any part of the said premises or make any alterations therein without the written consent of the First Party nor will the said premises be used for the manufacture of any other articles excepting the O'Keefe & Merritt ranges, hot water heaters, circulating heaters, floor furnaces and generators unless the written consent of First Party is first obtained.

Second Party agrees to manufacture any and all products required of it by the First Party and according to the specification of First Party for the term of this lease, all of which is to be done pursuant to the standard of care required of it by First Party.

First Party agrees to pay Second Party for said services its cost of labor plus two and one-half per cent (2½%) and to furnish all material and equip-

(Testimony of Daniel P. O'Keefe.)

ment (if such is not already in the plant) necessary to perform said service.

And, in addition, First Party agrees to pay Second Party an amount sufficient to cover the additional expense of providing the employees with all the benefits they would have enjoyed had they been employed by First Party. The benefits referred to are as follows:

1—Pension Fund. As per O'Keefe & Merritt Plan set forth in Permit No. 76325-LA, issued by the Department of Investment, Division of Corporations, State of California, it being understood that, in the event that Second Party does not renew this lease, the employees come back to work for First Party, then First Party may, at its election, deposit this fund in its Pension Fund to inure to the benefit of said employees.

2—Paid Up Insurance.

3—Contribution of Five and Over Club.

4—Christmas Bonuses. (If not included in vacation fund in Union contract.)

5—It is specifically understood and agreed between the parties hereto that there shall be no loss of seniority or any other benefits by reason of their employment by Second Party.

First Party shall pay all taxes and insurance on the premises and equipment in the premises and shall furnish all utilities and shall keep the premises in repair.

In witness whereof, the parties hereto have affixed

(Testimony of Daniel P. O'Keefe.)
their hands and seals the day and year first above
written.

O'KEEFE & MERRITT CO.,
a corporation

First Party

By /s/ D. P. O'KEEFE,
Pres.

PIONEER ELECTRIC
COMPANY, a copartnership
Second Party

By /s/ W. G. DURANT,

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: In connection with the document I have had marked as Board's Exhibit 18, and with the statement Mr. Collins made concerning the construction of this document, he and I are willing to stipulate that this document contains the substance of what he presently recollects that [998] he stated at that time and place. It is also stipulated that it is possible that other things were said at that time, but that Mr. Collins does not recall them. With that stipulation, I offer this document in evidence.

Trial Examiner Kent: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 18, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 18

Fellow Employees:

Mr. O'Keefe talked with you a few days ago and,

(Testimony of Daniel P. O'Keefe.)

I think, outlined the company's position on this Union controversy very well. He explained to you why it was that, although he was not trying to sell you either Union, he felt that the A. F. of L. was best for us for the reason that, particularly, in order to sell our Ranges, Floor Furnaces and Water Heaters, we would be in a position to have them connected up with A. F. of L. workers who are in the building trades.

Nevertheless, I have been bargaining, in good faith, with the CIO in order to secure peaceful labor conditions so that there would be no loss in pay or any trouble. I agreed to pay the highest rate paid in the stove industry in this area and I have called to their attention that A. F. of L. has just signed up Western Stove and are about to sign at Gaffers & Sattler. Both contracts represent a wage increase. We have agreed to meet it and to put it into effect.

I can assure you that the company is going to do everything possible to maintain peaceful labor conditions. None of you is going to be forced into any Union you do not want to join.

During the current difficulties, the plant will open at 8 AM and the employees' entrance will be through the shipping department. I discussed this matter today with the police department and they told me to have all the employees come through the shipping department so that they would not have the long line from Olympic Boulevard to the employees' entrance to protect.

(Testimony of Daniel P. O'Keefe.)

The A. F. of L. have assured me that they will see that any employees who want to work will get into the plant without getting hurt.

Do not start any fight with the pickets. Don't argue with them. If you are afraid of any one, ask the nearest officer to help you and he will take you into the plant.

If you want to work, come into the plant and don't be afraid of anyone.

[Endorsed]: Filed March 21, 1946.

Mr. Collins: It could not have been very much, because the speech was not but about two minutes long.

Mr. Nicoson: I think it could not have been over about four or five lines.

Q. (By Mr. Nicoson): Mr. O'Keefe, yesterday during your examination I asked you if there were any other written contracts in writing passing between the O'Keefe and Merritt Company and Pioneer Electric Company, during its existence, up to V-J Day, and you said you did not recall, and I asked you to make search in your files and if there were anything asked you to bring it in. Do you recall that?

A. Yes.

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 20, for identification.)

Q. (By Mr. Nicoson): I now show you a document, which for the purpose of identification, has been marked Board's Exhibit 20, and ask you to

(Testimony of Daniel P. O'Keefe.)

examine that and state if you know [999] whether or not that is a writing that you have produced in accordance with my request as being between the Pioneer Electric Company and O'Keefe and Merritt during that period. A. Yes.

Q. That is a copy of an original document, isn't it? Do you know who signed for O'Keefe and Merritt Company?

A. I don't know that we signed it. I asked Boyle to give me this, you know, I asked him if he would, and he said, "Well, you write what you want me to sign there and I will sign it for you." So I don't think that it had any signature from me, because there was no obligation on our part to give him anything. It was all the other way.

Q. Now, down in the left-hand corner partly typed and partly written, there are words: "Accepted August 20, 1942, Pioneer Electric Company, By W. J. Boyle." Is that Mr. Boyle's signature?

A. Yes, sir.

Q. That is Willis J. Boyle, isn't it?

A. Yes.

Mr. Nicoson: I offer this as Board's Exhibit 20.

Q. Again showing you, Mr. O'Keefe, Board's Exhibit No. 19 in evidence, which, I believe, you described as being the arrangements you made with Pioneer to manufacture your products,—

A. Yes.

Q. —I will ask you if Pioneer has actually taken over the manufacture of products under that particular lease. A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. Do you know when that occurred, the taking over occurred?

A. I believe it was February the 4th, I think.

Mr. Collins: May we go off the record a minute?

Trial Examiner Kent: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Q. (By Mr. Nicoson): Now, I think I asked you yesterday if you knew an L. J. Mitchell, and if he was an employee of the O'Keefe and Merritt. I believe you answered yes. A. That is right.

Q. Is Mr. Mitchell now employed by O'Keefe and Merritt Company? A. Yes.

Q. I will ask you if you know whether or not Mr. Mitchell owns any stock in the O'Keefe and Merritt Corporation. A. He does not. [1001]

Q. With respect to Robert J. Merritt, I believe you testified that he was the secretary-treasurer of O'Keefe and Merritt. I am not sure I asked you to fix how long Mr. Merritt had been secretary-treasurer. Can you do that for us? A. No.

Q. About as long as you have been president?

A. I think so. I think that is about it.

Q. I think you testified yesterday to your best recollection it was at least 20 years. A. Yes.

Q. You had been president of the company?

A. Approximately. Yes, I would say approximately.

Q. What I am leading up to, he was secretary-

(Testimony of Daniel P. O'Keefe.)

treasurer of the company throughout the war years and up to the present time? A. Yes.

Q. I will ask you, if you know, whether or not Mr. Robert J. Merritt owns any stock in the O'Keefe & Merritt Company. A. Yes.

Q. Could you give us the amount in percentages? I am not particularly interested in the number of shares.

A. My estimate would be about one-sixth.

Q. I know you can't be positive about that without the stock book. I am showing you now a certified copy of the [1002] original articles of incorporation, a photostatic copy, and direct your attention to the second page where under Article 7 it sets out the number of shares, and without quibbling too much about arithmetic that shows, does it not, that Mr. R. J. Merritt owned approximately a third of the stock at that time? Is that correct?

A. Well, it must be. I didn't remember it that way, but my impression was that he owned about half that much.

Mr. Nicoson: Well, I suppose we better mark this.

Mr. Collins: What is the date of that instrument?

The Witness: That is when we organized.

Mr. Nicoson: That is when they were originally organized.

Mr. Collins: 20 years ago.

Mr. Nicoson: Yes. I suppose we better have it marked so the record will be complete.

(Testimony of Daniel P. O'Keefe.)

Mr. Collins: I object to that upon the ground it does not tend to prove or disapprove anything at issue in this case. Undoubtedly there were a lot of stock transfers since that time.

The Witness: Yes, there have been a great many changes since that time. I only say I didn't remember even that it was that way to start with.

Q. (By Mr. Nicoson): Probably don't remember that you held that many shares yourself? [1003]

A. Yes, I remembered that, but I thought that Mr. and Mrs. Merritt's stock was equally divided. I mean, that was the impression I had in my mind, and I was sure that altogether it was only one-sixth, but I also very likely might be entirely wrong.

Mr. Nicoson: Will the reporter please mark this for identification?

(Thereupon, the document referred to was marked as Board's Exhibit 21, for identification.)

Mr. Nicoson: I offer for the record a certified copy of the original articles of incorporation and show it to counsel.

Trial Examiner Kent: Is may be admitted.

Mr. Garrett: What is that, 20?

Mr. Nicoson: 21.

Mr. Garrett: Does Board's Exhibit 20 have any date?

Mr. Collins: I wish to move at this time that Board's exhibit last in order be stricken from the record on the ground it is not the best evidence. Any transaction with anybody that was entered into 20 years ago is not the best evidence as to what the

(Testimony of Daniel P. O'Keefe.)

stock situation would be today or at the time the alleged unfair labor activities are charged against this respondent.

I submit that the best evidence would be the stock records of the corporation. [1004]

Mr. Nicoson: I think I agree with counsel, but I am trying to obviate bringing in the stock books if this witness' recollection is anyways close to right and he feels that he can approximate the holdings; that is good enough for me. If you insist on bringing them in——

Mr. Collins: No, I don't. I am willing to do this; I am willing to send somebody out to the telephone and call the secretary out there and have them look at the stock transfer and tell you exactly how many shares Mr. Merritt has, if that will save time. We won't get the record cluttered up with some misinformation then. I am inclined to believe Mr. O'Keefe is right in his estimate of what Mr. Merritt has, namely, one-sixth.

Mr. Nicoson: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

We will recess while Mr. William O'Keefe calls his office and gets the present status of the stockholders of the O'Keefe and Merritt Corporation.

(Short recess taken.)

Trial Examiner Kent: Back on the record following the recess.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I have had marked for identification as Board's Exhibit No. 22 a sheet of paper on which there are [1005] certain names and figures.

(Thereupon, the document referred to was marked as Board's Exhibit 22, for identification.)

Mr. Nicoson: During the off the record discussion I requested Mr. W. J. O'Keefe to call his office and obtain for us the stock distribution and the individuals holding the stock. He has now presented me with this sheet of paper which I have had marked Board's Exhibit No. 22, showing the percentage of stock held by all of the stockholders. He further states that this situation existed for the last four or five years and perhaps longer. The total number of shares outstanding is not stated, and I for one do not think it is too important for these proceedings, and I am willing to waive that particular figure.

Mr. Garrett: Is all the stock of the same class, Mr. Nicoson, according to the articles of incorporation?

Mr. Nicoson: Beg pardon?

Mr. Garrett: Is all of the stock of the same class?

Mr. Nicoson: I don't know about that.

The Witness: Yes, I can answer that if you want me to. That is right.

Mr. Nicoson: You have an answer and I accept that as if I put the question to the witness.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: I now offer for the record this

(Testimony of Daniel P. O'Keefe.)

Board's [1006] Exhibit 22, which I have shown to all the parties.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked as Board's Exhibit 22, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 22

W. J. Boyle, Jr.....	8.1%
Arline B. Oliphant.....	0.1%
Louis M. Boyle.....	8.3%
R. J. Merritt.....	12.5%
Lucille A. Merritt.....	16.8%
R. J. Merritt, Jr.....	4.0%
D. P. O'Keefe.....	23.7%
Phyllis J. Mitchell.....	4.8%
W. J. O'Keefe.....	4.8%
Evelyn B. Boyle.....	8.3%
Blanche N. Boyle.....	8.3%
W. J. and L. W. Boyle, Trustee.....	0.1%
Marion E. Jenks.....	0.1%
John E. Boyle.....	0.1%

[Endorsed]: Filed March 21, 1946.

Q. (By Mr. Nicoson): Now, Mr. O'Keefe, yesterday I was questioning you about the transaction with the U. S. Signal Corps. And since the hearing, you informed me today you have had an opportunity to refresh your recollection about that transaction, and you now know more about it than you did. Will you start and tell us just exactly

(Testimony of Daniel P. O'Keefe.)

what happened with respect to that transaction with the Signal Corps, in your own words?

A. As I remember, you asked me if we didn't offer \$80,000.00 and the Signal Corps said that wasn't enough, and then we offered more and bought the parts.

I told you I didn't know whether that—I wasn't familiar with it. I didn't know whether that was correct or not.

Since then I know. I have been thinking it over and I know that Mr. Durant suggested that we buy all of the unfinished contracts, the materials and units on hand that would be in your termination claim with the Signal Corps, and try and dispose of those—that is, finish the units from the parts we had and sell them. [1007]

I told him we weren't interested in that kind of business, we wanted to get the stuff out so we could get going on stoves.

He later took it up with—he then took it up with Mr. Merritt, who gave him the same answer. Then he came back to see me and wanted to know if it would be all right if he got some of the other boys together around there and they put up their own money and would purchase the parts and finish up what they could and sell them. He asked at the same time if we would do some stamping and things for them, which I said we would be glad to do, and help them in any way.

He then contacted the Signal Corps and made

(Testimony of Daniel P. O'Keefe.)

whatever bargain there was—\$88,000.00 or \$105,000.00, I didn't know about those—with the understanding that the Pioneer Electric would give us their check for an amount equal to whatever we were paying the Signal Corps for the articles that he was buying.

This was accomplished. He bought the unfinished stuff. I don't know whether it was deducted from what the Signal Corps owed us or whether we gave them a check for it. I am not familiar with that. I am sure the Pioneer Electric gave us a check for the amount that he paid the Signal Corps—that he agreed on with the Signal Corps for the goods. That is what you wanted?

Q. That is correct. Now I ask you about L. J. Mitchell. [1008] Is that the husband of your daughter Phyllis? A. Yes.

Q. William J. O'Keefe is your son, is that correct? A. Yes.

Q. Is Marion Jenks the daughter of Willis J. Boyle? A. Yes.

Q. And Robert J. Merritt is the son of Robert J. Merritt? A. Yes.

Q. Robert J. Merritt, Jr., I mean. Now, with respect to the stoves and hot water heaters and gas appliances, does the O'Keefe and Merritt Company have any trade name, brand name, I should say?

A. O'Keefe and Merritt brand.

Q. Since Pioneer Electric has taken over the business, or since February 4th, are they still using those brand names on the products, or do you know?

(Testimony of Daniel P. O'Keefe.)

A. Well, they don't sell anything to anybody but us, so we use it, and it is our brand name. They couldn't sell it to anybody else.

Mr. Nicoson: That is all. You may cross-examine.

Cross-Examination

By Mr. Collins:

Q. Has the factory ever been used to make floor furnaces for Ward Company under Ward's name, parts and so on?

A. We made parts for Ward, but I don't think we ever made [1009] any furnaces.

Q. How about the furnaces that were sold under Ward Machinery name? A. Yes.

Q. Was there ever any products made for Sears, Roebuck under their name, under their trade name?

A. Yes.

Q. So there have been other occasions when the O'Keefe and Merritt factory was used to make various products for different concerns under different names? A. Yes.

Q. Now, is it anticipated, so far as you know, whether or not Pioneer Electric will make anything that they will sell under their own name or under some trade name?

A. That is one of the ideas.

Q. They will have their own name and make their own products? A. Yes.

Q. Do you know whether the Pioneer Electric Company received the Army-Navy E during the war? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. You attended one of the ceremonies, you were invited as a guest? A. Yes.

Q. Have you ever made any speeches to the employees or to [1010] group of employees other than these three that have been put in evidence here by the Board? A. Over what period of time?

Q. From the very beginning, the time you took over as president.

A. Yes, I have made lots of speeches.

Q. Would you be able to estimate how many per year or some kind of an average? A. No.

Q. You have made a lot of them, in other words?

A. Yes, I try to keep the employees informed on most of the things that go on around there. I figure they are interested.

Q. You talked to them at the time that you received the award of merit of the American Legion, did you not? A. Yes.

Q. And you talked to them when your company received the Army and Navy E, did you not?

A. Yes.

Q. When O'Keefe and Merritt received it?

A. Yes.

Q. And you have talked to them at Christmas time and on many other occasions? A. Yes.

Q. Now, I will ask you, did you at any time tell anyone [1011] that they had to join either the American Federation of Labor or the CIO Steelworkers or any other union? A. No.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I object to that as calling for a conclusion.

Mr. Collins: I am asking him if he told them that they had to join.

Mr. Nicoson: Well, that is a conclusion and I think it might invade the province of the Board.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. O'Keefe, did you at any time tell anyone that they would be discriminated against if they did not join some certain union?

A. No.

Q. Did you ever threaten them with any form of punishment, loss of pay, discharge, or anything that you can think of of an unpleasant nature if they joined any union?

A. I can't remember things that I might have said 20 years ago, but in the last five or six years, if that is what you are referring to, that I can remember, I know I didn't.

Q. Did you ever authorize any employee, attorney, manager, or any other officer or any person to threaten or otherwise use your name to coerce employees into or out of any labor organization, within the last five or six years?

Mr. Tyre: I will object to that. It is immaterial and [1012] irrelevant whether or not he authorized agents of the company to make such statements. Whether he authorized them or not the statements of the agents are binding upon the principal in unfair labor practice cases.

(Testimony of Daniel P. O'Keefe.)

Mr. Collins: I submit this is one of the very issues of this case. There has been some attempt made through the testimony of Charles Spallino that Mr. O'Keefe told him to see Collins, Collins is directing these activities, or something of that nature. I submit this is proper cross-examination.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): You may answer. I will reframe the question. Did you ever authorize any agent or employees or any person to speak for us to intimidate or otherwise coerce employees into or out of any labor organization within the past four or five years?

Mr. Tyre: I object.

Mr. Nicoson: I will have to object to it on the ground it calls for a legal conclusion and also invades the province of the Board.

Mr. Collins: Miss Reporter, will you please read the question the Trial Examiner has authorized to be answered?

(The question was read.)

The Witness: No.

Trial Examiner Kent: The answer may be taken. It is in the record. [1013]

Q. (By Mr. Collins): Mr. O'Keefe, referring to page 917 of the official record and report of this case, a witness by the name of Charles Spallino is testifying. It is on page 917 at approximately line 10:

“Did you or did you not have reference to any particular person when you use the term

(Testimony of Daniel P. O'Keefe.)

the ruling power of O'Keefe and Merritt Company?

"A. Well, between Collins and Bill O'Keefe is the ruling power of O'Keefe and Merritt. That is the only way I can explain that."

I will ask you, is Bill O'Keefe or Collins the Ruling power of O'Keefe and Merritt?

Mr. Tyre: I will object to that. It calls for a conclusion of this witness.

Mr. Collins: One within the province of this man's knowledge. He is the president of the corporation. He ought to know who the ruling power is.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): You may answer.

A. You asked me the ruling power was—

Q. Collins or Bill O'Keefe, or both of them?

A. No.

Q. Now, Mr. O'Keefe, R. J. Merritt, Jr., is not an officer of the O'Keefe and Merritt Company; is he?

A. No. [1014]

Q. Is W. G. Durant an officer? A. No.

Q. Is Lewis Boyle an officer? A. No.

Q. Is Marion Jenks an officer? A. No.

Q. Is L. G. Mitchell an officer? A. No.

Q. Are any of these people, R. J. Merritt, Jr., W. G. Durant, Lewis Boyle, Marion Jenks, L. G. Mitchell, on the board of directors of the O'Keefe and Merritt Company. A. No.

Q. Do you have any employees, other than W. G.

(Testimony of Daniel P. O'Keefe.)

Durant and Lewis Boyle, who have outside activities, businesses of their own, and so on?

A. Yes.

Q. Would one of those be Mr. Atchison?

A. Yes.

Q. What is his capacity with O'Keefe and Meritt?

A. He is the advertising manager.

Q. Does he have an office in your building?

A. Yes.

Q. Does he not also have an office down town some place where he conducts his advertising business?

A. I think it is out on Wilshire Boulevard.

Q. He has other clients besides yourself?

A. Yes.

Q. White Motors is one of them, I believe?

A. Yes.

Q. Does Mr. Collins, your attorney, have offices in your buildings?

A. Yes.

Q. Does he also have offices down town?

A. Yes.

Q. Does he have other activities, other clients and businesses, besides working for you?

A. Yes.

Mr. Nicoson: I will stipulate he does.

Q. (By Mr. Collins): Do you have an employee by the name of B. L. Caldwell?

A. Yes.

Q. What is his job with your company?

A. Credit manager.

Q. Does he have any other outside activities?

A. I believe.

(Testimony of Daniel P. O'Keefe.)

Q. Does Mr. Louie Mitchell have any other activity besides an employee of the O'Keefe and Merritt and partner in Pioneer?

A. I don't know just what he has at the present time. I know he was—for three or four years he was in the James [1016] Graham Company.

Q. Was that within the last two or three years?

A. Yes. I don't know whether he is still in it or not.

Q. Does he have any operations in connection with oil drilling or oil wells?

A. Yes, I believe he is in that, too.

Q. Does he have any stock market manipulations he works with?

A. I am afraid so.

Mr. Garrett: What is his position with the company?

Q. (By Mr. Collins): What is his position with O'Keefe and Merritt?

A. He is auditor.

Mr. Garrett: Are you trying to get the man's job?

Q. (By Mr. Collins): Does Lewis Boyle have any other occupation or profession or business relations, except as a stockholder of the O'Keefe and Merritt Company and a partner in the Pioneer Electric Company?

A. Yes.

Q. What are they, if you know?

A. Outside of his orchid farm I am not familiar—

Q. Is he in the oil well drilling business?

A. I don't know.

Q. He is a wealthy man, in any connection?

(Testimony of Daniel P. O'Keefe.)

A. Yes. [1017]

Q. Willis Boyle, does he have any other activities besides being a stockholder and a director of the O'Keefe and Merritt, and a partner in the Pioneer Electric Company?

A. Yes. He is director of one or two banks, and he has a lot of outside interests. I don't know what they are, though.

Q. All during the time we have been discussing here, didn't he have an office both in the Pioneer Electric Company and one down town?

A. I think he closed his office down town.

Q. When did he close it?

A. I don't know.

Q. But he did have one during the war; isn't that right?

A. I never was in his office down town, so I don't know.

Mr. Nicoson: May I interrupt just a second? You used the words Pioneer Electric Company. Was that intentional? You said he had an office in the Pioneer Electric.

Mr. Collins: Yes, he did have one. He does now.

Q. (By Mr. Collins): Did Mr. Boyle have an office in the Pioneer Electric Company?

A. Yes.

Q. As a matter of fact, he has his office in the Pioneer and not in the O'Keefe and Merritt Company; isn't that true?

A. Well, he has his office over there in the same

(Testimony of Daniel P. O'Keefe.)

building. We are all in the same building, and he has his office over there. [1018]

Q. During the war, when the Pioneer Electric was in that approximately 12,000 square feet of area fenced off from the rest of the O'Keefe and Merritt Company, isn't it a fact he had an office built in there, a special office built in there?

A. That is right.

Q. Wasn't that office torn down when he started reconverting the factory? A. That is right.

Q. Didn't he have another new and special office built for himself in that part of the factory that is now leased to the Pioneer Electric Company?

A. Well, he has a special office marked off as part of the lease; it is understood that his office goes with the rest of the factory to the Pioneer.

Q. He, likewise, is an extremely wealthy man and has numerous other activities besides these we have mentioned here?

A. I don't know whether "extremely" is the right word or not. He seems to be very well fixed.

Mr. Nicoson: I take it the answer to the rest of the question is yes.

Q. (By Mr. Collins): Is he engaged actively in drilling oil wells at the moment?

A. I think so.

Q. W. J. O'Keefe, your son here, does he have any other activities, other than an employee of the O'Keefe and Merritt? [1019] A. Yes.

Q. Is he an owner or partner in a foundry?

(Testimony of Daniel P. O'Keefe.)

A. I understand he is one of the owners in a foundry.

Q. Entirely separate and apart from the O'Keefe and Merritt Company? A. Yes.

Q. Or the Pioneer Electric Company?

A. That is right.

Q. And is he also the owner of a machine shop business over here on Temple Street some place?

A. Yes, I understand he is.

Q. Now, don't you have a great number of employees who work for you who have little businesses of their own on the side, besides these that I have mentioned, who are in the Pioneer Electric Company?

A. Well, I understand that quite a few of the boys have outside interests.

Q. Now, as a matter of fact, isn't it true that O'Keefe and Merritt Company occasionally subcontract work to the employees they do in their garage or home?

A. Yes, we try to where it helps the employees.

Q. You don't have that work subcontracted with them with the idea of evading any action of the National Labor Relations Board; do you? [1020]

A. No.

Q. Was the purpose in leasing the O'Keefe and Merritt factory to the Pioneer Electric for the purpose of evading any orders of the National Labor Relations Board?

Mr. Nicoson: That is objected to as calling for

(Testimony of Daniel P. O'Keefe.)

a legal conclusion and invading the province of the Board.

Mr. Tyre: I am also going to object, Mr. Examiner, on other grounds. I think Mr. Collins is, in effect, now testifying. I think we may as well be realistic again at this point, as the Examiner suggested yesterday.

Mr. Daniel P. O'Keefe, the client of Mr. Collins, as a matter of fact, is his regular employer and has been for a number of years. This witness is not a witness of the Board. Mr. Collins oughtn't be permitted to cross-examine, asking leading questions as every one of his questions have thus far been. I think the Examiner must require him to treat this witness as his own, except perhaps where certain answers have been given by Mr. O'Keefe to questions asked by Mr. Nicoson. On those particular answers, I think it might be proper to ask a direct question, so that Mr. O'Keefe can deny or affirm that particular answer.

Aside from those, I don't think any of those have been touched so far in this cross examination. I think Mr. Collins should be required to observe the regular rules of evidence and not ask leading questions. [1021]

Mr. Collins: I wish to point out to the Trial Examiner that a witness is always permitted to testify as to his own state of mind. That is the very issue in this case. Is the O'Keefe and Merritt Company and the Pioneer Electric Company one and the

(Testimony of Daniel P. O'Keefe.)

same concern, or is the Pioneer Electric Company the alter ego of the O'Keefe and Merritt Company, and was the Pioneer Electric Company organized, a lease executed, to evade the National Labor Relations Board conducted election? I submit that is the very gist of this issue. That is what we are here for. That is the most pertinent question that could be directed to him.

Now, then, this is cross-examination, but if there is any objection to my adducing this type of evidence from this witness at this time, I submit that in the interest of expediency and in an attempt to expedite this matter so that O'Keefe doesn't have to come down here again and so that we do not have to take up hours of unnecessary time, I think the matter should be brought out at this time. There are a few matters, and I will tell you they will be very few, if any, that are not proper cross-examination. Then I will be glad to get those matters considered as redirect examination and have the witness called by myself. I would merely like to get the record of them while we have Mr. O'Keefe here. Let's get his story in and over with and get him out of here. [1022]

Trial Examiner Kent: Well, I think it is true, of course, I think there is some merit to Mr. Tyre's admonition, as I recollect the questioning——

Mr. Collins: I will reframe the question.

Trial Examiner Kent: Most of the questions I don't think, in fact, were leading. I think you intended to speed up and I don't think they were

(Testimony of Daniel P. O'Keefe.)

dangerously leading from the standpoint of being prejudicial to other parties who might have an adverse interest. I think the last question should be reframed.

Mr. Nicoson: So that the record does not indicate by my silence any agreement with Mr. Collins generally, I think that statement generally as to the purpose of this proceeding is substantial. I do submit that is a matter for the Board to decide, the purpose and the result, and I think we have—Mr. O'Keefe and I have been able to get along here, but I did not submit to him the decision of this case. That is my only position with respect to Mr. Collins' statement, and since he is going to reframe the question, I won't put it in the form of an objection.

Q. (By Mr. Collins): Now, Mr. O'Keefe, with reference to Board's Exhibit 13, being the lease executed in 1942 between Pioneer Electric Company and the O'Keefe and Merritt Company, at the time that you executed that lease, were you having any labor trouble in your factory? [1023]

A. No.

Q. Was that lease executed with the intention in mind of evading any orders of any Board or anything?

Mr. Tyre: I will object to that. That is certainly the type of leading question which I think is entirely improper.

Mr. Collins: I submit this is cross-examination, Mr. Trial Examiner.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I don't object to your stating the intent.

Q. (By Mr. Collins): What was your intent when you executed this lease?

A. Well, we had been having this wiring done by several other—several electrical companies, and Mr. Durant and Mr. Bucknell convinced me, or partly so, that we were paying too much money for it, and that it could be done at a lot less by having proper supervision and ingenuity, and that by having it close to home there we could—he could keep an eye on it as well as to do his own duties, perform his own duties for us, so it was to save money on it, was one of the principal things, and then the expediting it, getting it through when we wanted it was the other reason.

Q. I will show you Board's Exhibit No. 19, being a lease executed the 2nd day of January, 1946, between O'Keefe and Merritt Company and Pioneer Electric Company. I will ask you what was your purpose in executing that lease or the O'Keefe and Merritt Company.

A. Well, we have several reasons for executing this one. Well, in the first place, dating back some length of time, when it looked like the war might be over back in early 1945, Mr. Durant wanted to know where he would stand with the company after the war was over, so he could begin looking around for himself, his own interest, and I told him we would help him in any way we could to get started

(Testimony of Daniel P. O'Keefe.)

in manufacturing something that he could make some money on, because we realized he has a lot of ability, he is an organizer——

Q. May I interrupt just a moment, Mr. O'Keefe? Was this Mr. Durant a valuable man? Was he a high paid man? Can you estimate how much money he received?

A. I don't remember. I don't remember. He was a highly paid man.

Q. Would it amount to around a hundred thousand a year? A. I don't think so.

Q. Over 50,000. A. Yes.

Q. Over seventy five or less than seventy five?

A. I think it was over seventy five.

Q. Very well. Go ahead.

A. And so he had this opportunity to buy some Signal Corps and other stuff which he wanted to finish up, so by renting the building he could do his own—renting the building and [1025] his own employees, he could finish his own stuff. That was one reason.

Another reason was that they had done, Pioneer had done such an excellent job in saving money during the war for us, their cost was so low by comparison with what we were paying to the other several outfits that were doing it, that I thought maybe by having young blood in there, a high powered fellow like Durant and some of his assistants, maybe he could show us how to save money in manufacturing.

And then we had so many labor arguments around

(Testimony of Daniel P. O'Keefe.)

there of different kinds, the A. F. of L. would be—the CIO would be having a dawn patrol around and the A. F. of L. would have some fellows over there to see that the dawn patrol left at dawn, or something, I don't know what, and altogether it looked like it was a lot of trouble for what there was in it for us, and I was getting to an age where I didn't like to be annoyed with too many things, so I figured the easy way would be to lease the building to Pioneer Electric and let them do the worrying about it.

Q. When did you first think about this, when you began to find out about the dawn patrols, or had you thought of it on prior occasions?

Mr. Tyre. I will object. That is certainly a leading question, your Honor.

Mr. Collins: I will withdraw the question. Just a [1026] moment.

Trial Examiner Kent: Read the question.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. O'Keefe, when did you first think of leasing the factory to anybody?

A. I don't know just when I thought about it, but I talked to Durant about it, I would say, in—I would think it was the latter part of 1944 that we—that I figured we could work out something where he could use the tools and equipment and labor and so on in our plant for making something that he could sell, such as stoves. We even talked about the name of the stove, the Bakewell Stove and so on. That was, I think, the beginning of it,

(Testimony of Daniel P. O'Keefe.)

back in, I think probably 1944. I would say the latter part of 1944.

Q. Now then, prior to entering into this lease with the co-partnership known as the Pioneer Electric Company, did you have any discussion with any of your tax consultants concerning the lease?

A. Well, I don't know that we had tax consulting. I think it was—more or less had to do with the pricing of the range, talked it over with several people about being a help in establishing a price on the range, by having the labor done on a contract, it was easy to establish the cost of it that way which it was necessary to give to the O.P.A. in order to get a price established on our products. [1027]

Q. Are there any tax savings to the corporation resulting from this?

A. I don't think I can answer that.

Q. Have you been advised by any of your tax consultants that there are tax advantages by virtue of this sub-leasing?

A. Yes, we have been. I have been advised.

Q. Have you been advised by any of your tax consultants or experts that there are O.P.A. advantages?

A. Yes.

Q. Did you have any other reasons in mind for leasing the factory to the Pioneer Electric Company, that you can think of at this time?

A. Well, yes. I think I could say that one very good reason in my mind was that it would give Durant a chance, Durant and some of the others a

(Testimony of Daniel P. O'Keefe.)

chance to make some money and, of course, being in the higher tax brackets, some of that would be absorbed by the government, and they would have an opportunity to make some money.

Q. You knew there was an election conducted at your factory by the National Labor Relations Board, did you not? A. Yes.

Q. And do you know who won the election?

A. Yes.

Q. Did that election have anything to do with this leasing?

Mr. Nicoson: I object to that as calling for a legal [1028] conclusion, also invading the province of the Board.

Mr. Collins: Well, Mr. Trial Examiner——

Trial Examiner Kent: He may answer.

Mr. Collins: I submit—Very well. It has been ruled on. You may answer.

Trial Examiner Kent: You may answer.

The Witness: Well, it probably did something.

Q. (By Mr. Collins): What did it have to do with it?

A. Well, we were on the unfair list with the A. F. of L. and all our business came, or not all of it but a lot of it was done with the Building Trades, and I figured that we could lease to someone who would work under a contract, that would be satisfactory to the A. F. of L., we would probably be getting off the unfair sheet.

Q. Was that your only reason for leasing the factory?

(Testimony of Daniel P. O'Keefe.)

A. Well, I don't know. That was not the only reason. I mean I have stated three or four reasons there.

Q. In other words, that was just one of the reasons? A. That was just one of them.

Q. Just one of them. A. That is right.

Q. Do you know approximately how many employees the Pioneer Electric Company had while they were operating in this 12,000 square feet on Los Palos Street? A. No. [1029]

Q. Would it have been in the neighborhood of 200 employees?

A. I don't know. There were quite a few, but I never saw their records and I don't know.

Mr. Nicoson: I will stipulate with you that 180 is approximately correct.

Q. (By Mr. Collins): It has been stipulated, Mr. O'Keefe, that there were approximately 180—I will accept the stipulation—that there were approximately 180 employees there.

Mr. Tyre: Just a minute. I am going to object to that stipulation unless we set a time on those 180 employees, when they were there.

Trial Examiner Kent: Yes, I think clearly the time should be set.

Mr. Collins: It was during the time when they had 12,000 square feet in there.

Mr. Nicoson: That is what he said.

Mr. Collins: And it was set then.

Mr. Nicoson: As I understood, that meant from

(Testimony of Daniel P. O'Keefe.)

the time it came into existence up to V-J Day, or immediately thereafter.

Mr. Tyre: Just a minute, then I will accept the stipulation, about 180 up to V-J Day. All right, I have no objection to that.

Q. (By Mr. Collins): Now, Mr. O'Keefe, after V-J Day I [1030] suppose your company received cancellations. A. Yes.

Q. And you, in turn, cancelled your orders with the Pioneer Electric Company. A. Yes.

Q. Was it necessary for the Pioneer Electric Company to have some employees after V-J Day to complete your orders?

A. To complete our orders?

Q. Well, as far as you know, did they have any employees around the factory there in the part that was leased to them or any place else?

A. Oh, yes. They had quite a few employees around there. I don't know how many, that is, I don't know how many they laid off. They laid off quite a few, of course, from the cancellations.

Q. At the time this election was held, do you know whether or not O'Keefe and Merritt included those employees in the list that was submitted to the National Labor Relations Board as a list of those eligible to vote in elections?

A. Well, I had nothing to do with what was submitted to the Board, but I am reasonably sure that anybody that was not on our payroll was not submitted to the Board, and they would not be sub-

(Testimony of Daniel P. O'Keefe.)

mitted any more than if they worked for the Continental Can or anybody else.

Mr. Tyre: I move that answer be stricken now, as being [1031] a conclusion and not responsive to the question.

Mr. Collins: I think it is highly responsive.

Mr. Tyre: Beyond this witness' knowledge, and he so stated, therefore, I move that it all be stricken.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Trial Examiner Kent: What was the answer?

(The answer was read.)

Trial Examiner Kent: The record may remain, except the last clause of the sentence, I think, might be stricken. I think that that is purely a conclusion.

Mr. Tyre: You mean that part of the answer may stay where he says he doesn't know because he was not——

Trial Examiner Kent: No, the last clause. Read the last clause.

(The answer was read as follows: "and they would not be submitted any more than if they worked for the Continental Can or anybody else.")

Trial Examiner Kent: That may be stricken.

Q. (By Mr. Collins): Were those employees of the Pioneer Electric Company that you refer to carried on the payroll or records of the O'Keefe and Merritt Company? A. No.

Q. Did the O'Keefe and Merritt Company make

(Testimony of Daniel P. O'Keefe.)

any return to the Navy Department including the employees of the Pioneer [1032] Electric Company?

A. No.

Q. Did O'Keefe and Merritt Company make any Social Security return to the Department of Internal Revenue on behalf of the employees of the Pioneer Electric Company? A. No.

Q. Did the O'Keefe and Merritt Company make any sales tax returns to the Board of Equalization on behalf of the Pioneer Electric Company?

A. No.

Q. Did the O'Keefe and Merritt Company make anything out of this Pioneer Electric Company other than having their product manufactured at a reduced price and the rent?

A. Nothing, with the exception of what was taken care of in that agreement that I submitted to Mr. Nicoson this morning.

Q. You mean all that O'Keefe and Merritt got out of this deal was their monthly rent, they got their product manufactured cheaper, and more expeditiously? A. Yes.

Q. And then if the profit was too high you got a rebate, if it was 10 per cent?

A. That is right.

Q. And you are referring now to Board's Exhibit 20? A. Yes. [1033]

Q. Did O'Keefe and Merritt Company exercise any control over the Pioneer or its employees other than that of a landlord, as set forth in the lease agreement?

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: Object to that as calling for a legal conclusion and invading the province of the Board.

Mr. Tyre: And no proper foundation laid, your Honor.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Collins): What control did O'Keefe and Merritt Company exercise over Pioneer Electric Company?

Mr. Nicoson: Same objection.

Mr. Tyre: Same objection by me.

Trial Examiner Kent: The answer may be taken.

Mr. Tyre: Will you instruct the witness, your Honor, to answer that if he knows of his own knowledge?

Trial Examiner Kent: Well, of course, that is necessarily implied. I think the witness would understand that. Now, Mr. Reporter, read the question.

(The question was read.)

The Witness: We inspected the materials that they processed for us, and if they were acceptable—if they were not acceptable, we returned them for re-work. We had an expediter, I believe, spent most of his time following through to see that they produced the parts that we wanted at the time we wanted them, or we needed them, rather.

Q. (By Mr. Collins): What is the situation there now—— [1034]

(Testimony of Daniel P. O'Keefe.)

Excuse me. Are you through with your answer?

A. Well, that is about the only thing we did as far as Pioneer was concerned that I can think of.

Q. What is the situation now with respect to Pioneer?

A. We design for the Pioneer. We design our own stuff and submit it to them. It would be practically the same, and when the ranges are inspected and acceptable, why, that is about all we do at the Pioneer now.

Q. Is there any outside agreement that is not covered by the lease that has been submitted here as Board's Exhibit 19? I will reframe the question. Is there any outside agreement, other than the lease and the agreement set forth in Board's Exhibit 19, between yourself and Pioneer? A. No.

Q. Mr. O'Keefe, it has been testified hereto that Mr. Joe Spallino replaced W. J. O'Keefe as plant superintendent. At the time he was replaced, did you have in mind at that time the fact you have heretofore testified that you might have some other concern manufacture gas ranges?

A. No, I don't think so. I don't know. You have asked me something I don't know. Too many things happen for me to remember what was in my mind at those particular times.

Q. The giving of the job as plant superintendent to Joe Spallino, in place of your son, that took place after the conversation that you had had with Mr. Durant, did it not, that you were going to take care of him after the war and so on?

(Testimony of Daniel P. O'Keefe.)

A. Oh, yes.

Q. Do you have other concerns you subcontract work to, besides [1036] the Pioneer Electric Company? . A. Yes.

Q. Does the O'Keefe and Merritt Company still have any employees? A. Yes.

Q. Are you able to estimate about how many?

A. No, I couldn't.

Q. Would you say it was less or more than 50?

A. I don't know.

Q. Are you willing to continue negotiations or bargaining through your representatives with the CIO on behalf of the employees that you still have?

A. As you know, I have instructed counsel to so do.

Q. I know it, but I want everybody to know it. Are you willing to sign a contract through your representative with the officers of the CIO, if a satisfactory contract can be arrived at?

A. Yes.

Q. Have you ever seen the contract that the Pioneer Electric Company has signed with the American Federation of Labor and its various locals? A. No, I don't think so.

Q. Are you willing to sign a contract with the CIO, paying the going rate in the stove industry in this area? A. Yes. [1037]

Q. As to the employees you still have working for you? A. Yes.

Q. During the war did you ever act as management representative on the War Labor Board?

(Testimony of Daniel P. O'Keefe.)

A. Yes.

Q. Are you familiar with what is known as maintenance of membership? A. Yes.

Q. Are you willing to incorporate in your contract the customary maintenance of membership clause? A. Yes.

Q. Mr. O'Keefe, at the time that the CIO has been attempting to get a contract from the O'Keefe and Merritt Company, have you ever seen the contract which they submitted to your company?

A. I don't think so.

Q. Are you willing to recognize——

Mr. Nicoson: Pardon me. What was his answer?

Mr. Collins: "I don't think so," he said.

I wish to point out to the Examiner I am surprised at the testimony of this witness. I recall having shown him this contract. I would like to go into it a little more. I am not attempting to impeach the testimony of the witness, I am attempting to refresh his memory.

Trial Examiner Kent: Yes. You may do that.

Q. (By Mr. Collins): Do you recall my bringing this contract (indicating) in your office and discussing various clauses? Maybe not this one, but one like it. Where we went over the question of the American Legion's participation in it and the use of the Five and Over Clubrooms, and that sort of thing?

A. I don't remember you had a contract. I knew you had some parts of the contract you

(Testimony of Daniel P. O'Keefe.)

wanted to talk about. But maybe you did have the whole contract. I didn't read it. Whatever we talked about was the things you thought I should go over.

Q. Are you willing to recognize the CIO as the exclusive bargaining agent for all the employees that you now have on the O'Keefe and Merritt payroll within the appropriate bargaining unit, as set forth in the results of the election won by the CIO?

A. Well, as I understand it, the CIO didn't want the truckdrivers and they now belong to the AFL. I couldn't give the CIO exclusive bargaining rights, inasmuch as——

Q. I am not asking you are you willing to force them into the CIO, I am asking are you willing to let the CIO bargain for your American Federation of Labor truckdrivers, if they so desire?

A. Yes.

Mr. Nicoson: Your question was will he recognize. [1039]

Q. (By Mr. Collins): Will you recognize the union as the sole collective bargaining agent for the employees within the bargaining unit as certified by the National Labor Relations Board?

A. How can I recognize them there, if they don't represent the truckdrivers?

Q. They can bargain for them; can't they?

Mr. Tyre: I will object to that. That is arguing with the witness. Now he is leading the witness. He has had that same answer given twice.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: The record may remain. It speaks for itself.

The Witness: I understand that the CIO told you—I think it was you it came through—they did not want the truckdrivers and they should join the AFL. I think we already have that contract with them.

Mr. Nicoson: Just a moment. I want to strike the answer as not being responsive to the question. I don't think it is responsive to what Mr. Collins asked. I don't think it is what he expected, either.

Trial Examiner Kent: I wonder if any counsel, other than the counsel making the inquiry, can make a motion to strike on that ground.

Mr. Nicoson: Your Honor, I have authority for that, too. Not only in California but in about 15 other states, that I [1040] can mention to you, the right to strike the answer as not being responsive goes to either side. If you want me to quote you authority on that, I can do it.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Collins: I will withdraw the question. I will submit the answer may go out. I want to ask this witness one blanket question.

Trial Examiner Kent: It may go out.

Mr. Tyre: I won't stipulate to that. I think the first——

Mr. Collins: The motion was made on behalf of the Board's attorney. I am willing to accept it.

Mr. Tyre: I may argue the question if I want.

(Testimony of Daniel P. O'Keefe.)

The first part, I think, is responsive. The question is, "Would he recognize the CIO?" He said, "How can I recognize the CIO?"

Mr. Nicoson: I withdraw the motion.

Mr. Tyre: I take it the answer will remain?

Mr. Collins: We will start over again.

Trial Examiner Kent: Where are we on the record now?

Mr. Nicoson: I am withdrawing the motion to strike, so the record should remain, I suppose.

Mr. Collins: I am going to start all over again. I am going to ask the witness one question, instead of going through the contract.

Q. (By Mr. Collins): Mr. O'Keefe, are you willing to sign [1041] any sort of a contract that I agree to with the CIO, on behalf of your employees? A. Yes.

Mr. Collins: I will offer again to stipulate I will sign a contract with the CIO, based on my previous offer in this case.

Mr. Nicoson: I again decline.

Mr. Collins: Very well.

Q. (By Mr. Collins): If I told you, Mr. O'Keefe, I was willing to recognize the union as the sole collective bargaining agent for all its employees within the bargaining unit as certified by the National Labor Relations Board, that would be all right with you? A. Yes.

Q. And if I told you we would sign a mainten-

(Testimony of Daniel P. O'Keefe.)

ance of membership contract, that would be all right with you? A. Yes.

Q. If I asked you to sign a contract granting the CIO the check-off for those employees that they have under their maintenance agreement, would that be all right with you? A. Yes.

Q. If I O.K.'d their hours of work, would that be all right with you? A. Yes.

Mr. Nicoson: Are we talking about the employees now of [1042] O'Keefe and Merritt?

Mr. Collins: I am talking about the employees now of O'Keefe and Merritt all the time; not any Pioneer Electric employees.

The Witness: That is right.

Q. (By Mr. Collins): They have a contract?

A. Yes.

Q. On the question of wages, are you willing to agree to a set of wages being paid at the present time by the Gaffers & Sattler Company, the Wedgewood Company, and the Western Stove Company, all of whom are manufacturing gas ranges in competition with your concern?

A. Yes. I might qualify that answer a little bit. I don't know whether the rates are comparable in San Francisco where the Wedgewoods are made. But Gaffers & Sattler and Western Stove Company are in this territory, and whatever the rate is with them which, I presume, is the same as Wedgewood, it will be satisfactory to us.

Q. Any other advantages that your employees now have, those of the O'Keefe and Merritt Com-

(Testimony of Daniel P. O'Keefe.)

pany, would not be taken away from them by virtue of the signing of this agreement; would they?

A. No.

Q. You would agree to a night-shift bonus for those employees of yours you now have that might work on night shifts [1043] or swing shifts; is that right?

A. Whatever is the going rate and policy.

Q. And the same is true with the question of holidays; is that so? A. That is right.

Q. And you are agreeable to recognizing seniority of the employees; are you not? A. Yes.

Q. If I said to you that the question of seniority, as set forth in the CIO's contract, was a fair one and I agreed to that, that would be agreeable with you? A. Yes.

Q. The same is true with the question of vacations; is it not? A. Yes.

Q. If I O.K.'d the grievance procedure, that would be all right with you? A. Yes.

Q. And the grievance record? A. Yes.

Q. The method of handling people that are discharged? A. Yes.

Q. And recalling them to employment?

A. Yes.

Q. The portion of the contract that refers to benefits and [1044] privileges, if I O.K.'d that, that would be all right with you? A. Yes.

Q. The leave of absence, the same answer?

A. Yes.

Q. Now, the question of veterans. On the ques-

(Testimony of Daniel P. O'Keefe.)

tion of veterans, do you have in the O'Keefe and Merritt factory a room set aside for the O'Keefe and Merritt Post of the American Legion?

A. It is for use of the American Legion and Five and Over Club together.

Q. That is an auditorium in the O'Keefe and Merritt factory; is it not? A. Yes.

Q. What is the approximate size of the auditorium? A. 35 by 75, I think.

Q. Is it equipped with public address systems?

A. Yes.

Q. Stage? A. Yes.

Q. Chairs? A. Yes.

Q. It is a regular small theater, as a matter of fact? A. Yes.

Q. That is where the O'Keefe and Merritt Post of the American [1045] Legion customarily meets?

A. Yes.

Q. Now, then, all problems relating to veterans, are they handled in your factory, as far as your employees are concerned, by the O'Keefe and Merritt Post of the American Legion?

A. All problems—I didn't quite get that.

Q. I will reframe the question. Are you willing to sign any kind of a contract with any union that would deprive the O'Keefe and Merritt Post of the American Legion their right to represent their membership?

A. The American Legion has never represented

(Testimony of Daniel P. O'Keefe.)

their membership on a labor—they have never talked to me on labor questions at all.

Q. What I am trying to get at, Mr. O'Keefe, is you are not going to sign any kind of a labor contract that is going to take any of their rights away from them; is that true? A. That is right.

Q. You wouldn't sign any sort of an agreement that did conflict with the rights of the post of the American Legion in your factory? A. No.

Q. You are willing to sign any sort of an agreement that incorporates what is generally known as a GI Bill of Rights? A. Yes. [1046]

Q. And you will incorporate in this agreement, if I O.K.'d it, that portion relating to group insurance; is that right? A. Yes.

Q. And you will agree to extraordinary rules concerning safety and health; will you not?

A. Yes.

Q. We will exceed the state limits, the rules set forth by the Industrial Accident Commission in the State of California? A. Yes.

Q. And you would grant the union the right to have a bulletin board in your factory?

A. To have a what?

Q. To have a bulletin board? A. Oh, yes.

Q. If I O.K.'d this portion called miscellaneous provisions, that would be agreeable with you; would it not? A. Yes.

Q. And the termination portion, that would be agreeable if I O.K.'d that; is that not so?

A. Yes, sir.

(Testimony of Daniel P. O'Keefe.)

Q. You are still willing to bargain with the CIO for the employees of the O'Keefe and Merritt Company through me as your representative?

A. Yes.

Q. Do you recall having any conversations with Mr. Charles [1047] Spallino within the last year?

A. I have had many of them. I talked to him quite a little.

Q. Do you talk to a great many employees in the factory, as you walk around through there?

A. Yes.

Q. Do you recall having a conversation with Mr. Charles Spallino in your office within the last year?

A. Yes.

Mr. Collins: May I have the date of that conversation, Mr. Nicoson? I can't remember.

Mr. Tyre: 27th of January, 1946.

Mr. Collins: 27th of January, 1946.

Mr. Tyre: Of November, excuse me.

Mr. Collins: 27th of November.

Q. (By Mr. Collins): Do you recall on or about the 27th day of November, 1946, having a conversation with Mr. Charles Spallino in your office?

Mr. Nicoson: It couldn't be 1946 yet.

Mr. Collins: 1945. I guess it is 1945.

The Witness: I wouldn't remember the date at all. But somewhere last fall Charlie Spallino and Johnny Levascos came into my office to talk to me, yes.

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Collins): Will you relate the conversation as best you can recollect it?

Mr. Nicoson: Couldn't we have the time fixed more definitely [1048] than that? Last fall, that is several months.

Q. (By Mr. Collins): Was that before or after the labor election held at the O'Keefe and Merritt factory?

A. It was before. I recollect now it was before. Shortly before.

Q. Shortly before? A. Yes.

Q. What was the conversation?

A. Charlie had a speech that he was going to make. He was recently elected as—not recently. He was president of the Five and Over Club. He had a speech he wanted to make to the members of the Five and Over Club.

Mr. Tyre: I think this witness should be instructed, as other witnesses have, not to state what he thought took place or what was going to take place; merely to relate the exact conversation between Mr. Levascos, Mr. Spallino, and himself.

Trial Examiner Kent: As near as you can give the conversation. Give the conversation as engaged in by Spallino, yourself, and Levascos.

Q. (By Mr. Collins): Try to use the expression "I said" and "He said." Use that phraseology.

A. Charlie submitted a paper to me with some writing matter on it. I read it. I said I didn't think it was the right kind of a speech to give, it

(Testimony of Daniel P. O'Keefe.)

might get us in trouble. I suggested that it be changed in some places. [1049]

After I made several suggestions, I thought maybe it would be better that he should not make a speech as president of the Five and Over Club for fear anything he might say would be interpreted as reflecting the policy or sentiments of O'Keefe and Merritt Company.

So I told him to just throw it away and whatever I wanted to say to the boys I would say it myself.

Q. Did you tell him he could not make a speech either for or against the A.F.L.?

A. I don't think I told him that.

Q. Did you tell him he could not make a speech either for or against the C.I.O.?

A. No, we didn't mention that.

Q. Did you at any time tell him that you would discriminate against him if he did work either for or against the A.F.L. or for or against the C.I.O.?

A. No.

Q. Do you recall having some conversation with Charles Spallino in your office on a prior occasion concerning union activities?

A. It just seems to me he came in one time to talk about things that were going on in the factory, but I don't remember what was said at all.

Q. Do you recall telling him to go see Collins, or words to that general effect? [1050]

A. Yes, I do.

Q. That is the conversation I am referring to.

(Testimony of Daniel P. O'Keefe.)

Relate, to the best of your recollection, that conversation.

Mr. Tyre: That is objected to, no proper foundation laid as to time, place, and persons present.

Q. (By Mr. Collins): Was anyone else present besides you and Charles Spallino at that time?

A. I don't know.

Q. Was your secretary in the room?

A. I don't know.

Q. It was in your office at the O'Keefe and Merritt factory some time prior to this conversation concerning the speech you just testified to?

A. Yes.

Q. Go ahead and relate the conversation.

A. I don't remember just what was said. But he gave me the impression——

Mr. Tyre: I will object.

The Witness: If that will answer——

Trial Examiner Kent: Well, try and avoid general conclusions. Your present recollection, however, as to what you think he said, the words that were said, the whole thing. Give your present recollection as to what he said at that time.

Q. (By Mr. Collins): Mr. O'Keefe, you don't have to use the exact words of Charles or yourself. Relate the conversation [1051] in your own words.

A. He asked what he would do about encouraging or discouraging men from joining one or the other unions.

Q. Did he ask you which side of the fence you were on?

A. I don't remember.

(Testimony of Daniel P. O'Keefe.)

Q. Very well. Proceed with the conversation.

A. I told him that I wouldn't give him any answer to that at all, that Mr. Collins had done business with both A.F.L. and C.I.O. That I knew he represented different firms that had A.F.L. contracts and C.I.O. contracts, and that he would be very familiar with the good and bad of either side, and for him to see him.

I wanted to be very careful I didn't get into any legal entanglements with the National Labor Relations Board. And I recommended—I felt if I recommended one over the other I might get myself in——

Mr. Tyre: I move that last sentence be stricken, your Honor, as a conclusion; not responsive.

Mr. Collins: I submit it is entirely responsive to my question.

Mr. Tyre: What he felt is not part of the conversation. [1052]

Trial Examiner Kent: Read the last clause.

Mr. Collins: The witness can always give the reason for his answer.

(The following portion of the record was read: "I felt if I recommended one over the other I might get myself in——")

Trial Examiner Kent: I think it is entirely responsive. I think it is the reflection of the conversation, rather than the conclusion, as I interpret it.

Mr. Tyre: Let him so state that is what he

(Testimony of Daniel P. O'Keefe.)

stated to Spallino. He said that is the way he felt about it. That is the reason he made that statement. I don't care how he felt. I am interested only in what he stated to Mr. Spallino and what Mr. Spallino stated to him.

Mr. Collins: I think these motions are entirely out of order. The statement of Mr. O'Keefe was interrupted right in the middle. I don't know what he said.

Mr. Tyre: I don't care as long as he was talking about his feelings.

Trial Examiner Kent: Let the witness finish. I will consider the whole answer.

The Witness: —in bad with the National Labor Relations Board.

Q. (By Mr. Collins): Were there legal rights involved?

Mr. Tyre: I will make my motion——

Trial Examiner Kent: Now read the whole answer. [1053]

(The record was read.)

Mr. Tyre: I further move the last two sentences be stricken as being conclusions and not responsive to the question, as to what the conversation was.

Mr. Collins: I think it is entirely responsive and relates to the conversation as best this witness can remember.

Mr. Nicoson: I object unless the witness told that to Mr. Spallino, what he had in his mind at that time. I don't think it is responsive.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: I can't see that the parties are prejudiced. The record may remain.

Q. (By Mr. Collins): Now, Mr. O'Keefe, at the time you had this conversation with Mr. Spallino in your office, did you understand the legal problems involved in conversing with one of your employees concerning labor activities of any kind?

Mr. Tyre: To which I will object for the same reason I stated. That is calling for a state of mind; only what he stated to Mr. Spallino.

Mr. Collins: This is the very crux——

Trial Examiner Kent: I think the question isn't proper. It is practically, in effect, asking the witness whether or not he can legally construe the National Labor Relations Act. Reframe the question.

Mr. Collins: I wish to make an offer of proof at this time. I offer to prove by the testimony of this witness, if [1054] he is permitted to testify, at the time he had a conversaaion with Charles Spallino in his office——

Mr. Tyre: Just a minute. I submit, your Honor, that you merely asked counsel to reframe his question. I am going to object to this entire line. I move he reframe it. If he is going to make an offer, the witness should be excluded.

Trial Examiner Kent: It may not be necessary to make an offer of proof. Try to bring out what you want by questions; maybe you can. I am not restricting you.

Q. (By Mr. Collins): Did you understand the

(Testimony of Daniel P. O'Keefe.)

legal problems involved in conversing with an employee concerning labor activity, when you had this conversation with Charles Spallino?

Mr. Nicoson: Same objection.

Mr. Tyre: Same objection.

Trial Examiner Kent: He may answer that.

The Witness: Well, I am not very familiar with all the details of the law.

Q. (By Mr. Collins): You did know, generally speaking, did you not, that you don't have the right to tell your employees to join or not to join anything?

A. That is right.

Mr. Tyre: Object to that as calling for a conclusion; and also strictly leading and suggestive.

Mr. Nicoson: Not a proper statement of law.

Trial Examiner Kent: No. I think the question is [1055] entirely too broad. I don't think counsel intends it should be that broad.

Read the question, Miss Reporter.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Did you tell Charles Spallino that Collins was in charge of the labor activities, and whatever he said was all right with you, or words to that effect?

A. I don't remember saying that. I told him to see you—I think I stated just about the way it was said, that you had the dealings with both C.I.O. and A.F.L. and were familiar with all the law, as well as the activities of the different companies, and to see you.

(Testimony of Daniel P. O'Keefe.)

Q. Why didn't you tell him yourself?

A. Well, I didn't want Charlie doing anything for us around there, for fear he would not do the thing right or that he might get us in trouble by his activities, being president of the Five and Over Club, that anything he did do might reflect on the O'Keefe and Merritt Company.

Q. Were you trying to get him to stop organizing for either the A.F.L. or the C.I.O.?

Mr. Nicoson: I object to that. There is nothing to show from this witness' testimony he knew anything about it so far, if it was a fact.

Mr. Collins: Just a moment.

Q. (By Mr. Collins): Maybe I will reframe the question. [1056] As I recall, the testimony of Mr. Charles Spallino was there was something to the effect that he came in there and asked O'Keefe did he want him—what did he think about labor activities and so on and so forth? O'Keefe, rather than committing himself, said to go and see Collins. The idea was Collins would go out and tell him to organize for the A.F.L.

Mr. Nicoson: That is not what this witness testified to.

Mr. Collins: That is what Charlie Spallino testified to.

Mr. Nicoson: It is not what he testified to in his recitation of the conversation. It may have come up. I don't know, but in his recitation of the conversation he has not said that. He merely said Charlie came up and wanted to talk to him

(Testimony of Daniel P. O'Keefe.)

about some things going on in the factory and he told him to go see you, because you had had all those dealings. I think perhaps it did come up, but he didn't say that.

Mr. Collins: As I recall, that was the testimony of Spallino, and I am trying to find out what the conversation was. If that was it, let's hear it.

Mr. Nicoson: I have no objection to that.

Trial Examiner Kent: We will take a recess at this point to reconvene at 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [1057]

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: You may proceed.

DANIEL P. O'KEEFE,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Collins:

Q. Mr. O'Keefe, calling your attention to the Saturday morning, sometime before an election was held at the O'Keefe and Merritt plant, a conversation is alleged to have been held in the—in or near the shipping department, at which time a

(Testimony of Daniel P. O'Keefe.)

John Miles was present and Angel Defoe was present and a Charles Gatone was present, and possibly others in or near that location. It has been testified that Mr. Charles Spallino was getting the beer together, I believe, for a Five and Over Club. He approached you and had some discussion about some 85 signatures he is alleged to have secured for the A.F.L. Do you recall having a conversation with him at or about that time?

A. No, I don't think it made any——

Q. Do you recall congratulating him for securing 85 signatures?

A. No. But I don't believe I would have congratulated him if he told me so. [1058]

Mr. Tyre: I object to that as self-serving, a conclusion, not responsive.

Q. (By Mr. Collins): Did you or did you not——

Mr. Tyre: Just a minute, Mr. Collins.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Collins): Did you or did you not congratulate him?

A. I just don't know why I would, so I can't answer. I don't remember, that is all.

Q. If you had congratulated him, would you have remembered it?

Mr. Nicoson: I object to that.

Mr. Tyre: I join in the objection.

Mr. Nicoson: It has been asked and answered.

Trial Examiner Kent: Sustain the objection.

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Collins): Did you ever congratulate anybody for securing signatures in any union?

Mr. Nicoson: Objected to as immaterial, unless the time and place and persons present are stated.

Mr. Collins: At any time?

Trial Examiner Kent: Reframe the question.

Mr. Collins: What is the ruling?

Trial Examiner Kent: I ruled you should reframe the question.

Q. (By Mr. Collins): Any time within the last year, did you [1059] congratulate any of your employees for securing members in any union?

A. I don't think so, but I don't know.

Q. Did you ever tell Mr. Spallino that you heard that he was using too much pressure to get members for the A.F.of L.?

A. I don't remember telling him, no. If I heard that he was using pressure, I probably would have called it to his attention. I don't remember it.

Q. Now, then, calling your attention to this occasion when Mr. Spallino came into your office and discussed with you something to the effect that the Five and Over Club wanted to know which side of the fence to get on or whatever the testimony was, do you recall anything else that was said between yourself and Charlie at that meeting, Charlie Spallino?

Mr. Tyre: May we have the particular time and place of that conversation?

Mr. Collins: This is the one they have been talking about for three days here.

(Testimony of Daniel P. O'Keefe.)

Mr. Tyre: There are a number of conversations. I will object to the conversation, your Honor, unless we have the time and place.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Do you recall having a conversation with Charlie Spallino in your office wherein you told him to talk it over with Collins, do you remember that conversation? [1060]

A. Yes.

Q. Now, then, what else was said at that conversation besides what you have already testified to?

A. I can't remember what else was said. I refrained from saying very much of anything, because I felt all along that Charlie was not acting in good faith, so I didn't talk much to him about either one of the unions or the Five and Over Club.

Q. Then at this time you cannot remember anything more that was said? A. No.

Q. Do you recall him asking you which side the Five and Over Club should take in this contest between the two unions?

A. I think he did ask me that.

Q. And what did you tell him concerning that?

A. I believe I told him that the Five and Over Club had nothing to do with the union activity and should not be on either side. I think I told him that. Now, I don't remember.

Q. Did you tell him that there were legal problems involved that you did not understand, or words to that general effect?

(Testimony of Daniel P. O'Keefe.)

A. Well, I don't remember the words that were used, but I asked him to go to our attorney, figuring there were legal things involved.

Q. I see.

A. I remember distinctly of telling him to see you, that you [1061] were our attorney, and to go to see you.

Q. Did you, Mr. O'Keefe, ever attempt to tell the Five and Over Club what it should do concerning union activities?

A. I have attended so many meetings of the Five and Over Club in the many years gone by that I can't recall what might have been said then, but in the last couple of years I am sure that I did not tell that.

Q. So far as you know, were both unions organizing during working hours inside your factory?

Mr. Nicoson: That is objected to as calling for a conclusion of the witness. If he knows he can tell what he saw.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Have you ever seen anyone in the factory organizing for either union?

A. No.

Q. Have you ever seen anyone in the factory organizing for either union? A. No.

Q. Have you ever heard anyone in the factory attempting to secure members in either union?

A. Yes.

Q. What have you heard?

(Testimony of Daniel P. O'Keefe.)

Mr. Tyre: I object.

Mr. Nicoson: I object to that as hearsay.

Q. (By Mr. Collins): What was the time? Where was this, what you heard? Where did this take place?

A. Where did it take place? You asked me in the factory.

Q. Yes. A. It was in the factory.

Q. Where was it? What part of the factory?

A. You are asking me what I heard now?

Q. No. We have to lay a little foundation for that. I don't know what you heard. Was it a conversation?

A. Several people reported to me that Lou Ortega was signing up C.I.O. and that Johnny Levascos was signing up A.F.L.

Mr. Nicoson: I move to strike the answer as not responsive, and also the fact no foundation is laid for it; also the persons making the alleged report have not been identified. Otherwise, immaterial, incompetent, and irrelevant.

Mr. Tyre: I will join in that motion.

Mr. Collins: Just a moment, before your Honor makes a ruling on that. I submit this is entirely relevant. The position of this respondent is that both unions were afforded equal facilities to organize along any peaceful methods they saw fit, so long as the company was not concerned. If these gentlemen will cease and desist for a moment, I will attempt to find out what happened.

Trial Examiner Kent: I will reserve ruling.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I think the answer should go out until he [1063] lays the proper foundation.

Trial Examiner Kent: Technically, I think, counsel is right. My ruling is going to be I will treat the objection as a motion to strike and permit counsel to lay the foundation.

Q. (By Mr. Collins): Do you recall when this conversation took place? A. No.

Q. Was it before or after the election?

A. I don't remember.

Q. Was it within the last six months?

A. Yes.

Q. Within the last three months?

A. Well, I would say that I heard that Louie Ortega was getting memberships within the last three months. I didn't hear anything that Levascos was doing in the last—I mean, I don't remember just how long I heard that Levascos was signing up members.

Q. Who told you that these men were signing up members?

A. In **talking with** about 400 or 500 employees it didn't register at all. I mean whoever told me, I just forgot it, and **went on**; that is all.

Q. Prior to the time that you made this lease to the Pioneer Electric, were you in the factory, in the manufacturing part of the factory most of the time; a great deal of the time? [1064]

A. A great deal of the time, yes.

Q. And it is an open building where you walk

(Testimony of Daniel P. O'Keefe.)

through it and you can see almost everyone; isn't that so?

A. I can see a great number, yes, at one time.

Q. And the employees frequently stop and talk to you; do they? A. Yes.

Q. As a matter of fact, you encourage them to stop and talk to you; isn't that true?

A. I stop and talk to them occasionally, quite often, to encourage them to talk to me.

Q. You probably talked to as many as 25 or 50 employees daily; isn't that true?

A. I don't know what the number would be. I talk to a number of them every day.

Q. There would probably be an average of four or five hundred employees in the factory most of the time; would that be true?

A. I don't think there is that many now; between three and four hundred, I think.

Q. Would you think 25 a day would be a fair average you talk to?

A. No, I don't think—that is, to hold any lengthy conversation, I don't think it would be that.

Q. 10 or 15 of them? [1065]

A. I have never stopped to consider it. It would be only guesswork, if I were guessing as to how many I talked to a day.

Q. Did you ever give any instructions to any of your subordinates in the O'Keefe and Merritt factory concerning union activity?

(Testimony of Daniel P. O'Keefe.)

Mr. Tyre: Just a moment. At this time it appears, your Honor, this particular line is now ended. I move to have the testimony stricken.

Mr. Nicoson: I oppose that. I insist the record remain as it is.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Collins): What instructions have you ever given any of your subordinates in the O'Keefe and Merritt factory with respect to encouraging or discouraging membership in either union?

Mr. Nicoson: May I have that question?

(The question was read.)

Mr. Nicoson: I think that assumes a fact not in evidence. Maybe I missed the preceding question.

Mr. Collins: The allegation of the complaint——

Mr. Nicoson: Would you mind catching me up? Read me the last two questions.

Mr. Collins: This is the first question of this line.

(The record was read.) [1066]

Mr. Nicoson: Did you reframe the one when Mr. Tyre——

Mr. Collins: I reframed it.

Mr. Nicoson: The last two questions and answers.

(The record was read.)

Mr. Nicoson: You see, that is what I mean, first asking if he did and then you say what were

(Testimony of Daniel P. O'Keefe.)

they, and he didn't give you an answer to the other question.

Mr. Collins: Oh, very well.

Q. (By Mr. Collins): Have you ever given any instructions to any of your subordinates in the O'Keefe and Merritt Company with respect to encouraging or discouraging membership in either union? A. That covers a long period of time.

Q. In the last five years. Well, let's get down to the last two years, if that is making you think too hard.

A. I am trying to think of anybody that I talked to about either encouraging or discouraging them.

Q. Well, you just have to give the answer to the best of your recollection. Have you, as far as you can remember, ever given any instructions?

A. I don't know about the instructions. I usually discouraged it myself by my speeches, if that is what you want to know.

Q. Did you ever tell any of your subordinates that you wanted them to discriminate against people for joining either [1067] union?

Mr. Nicoson: I am going to have to object to that. It calls for a conclusion of the witness, a legal conclusion of the witness.

Mr. Collins: Paragraph 10, Page 7 of the complaint states "that respondents by their acts heretofore alleged did interfere with, restrain and coerce their employees and are interfering with, restraining and coercing their employees in the exercise of

(Testimony of Daniel P. O'Keefe.)

rights granted their employees by Section 7 of the Act."

Q. (By Mr. Collins): Now, Mr. O'Keefe, with respect to this first word, have you ever instructed any of your subordinates to interfere with the employees in their attempt to organize a union, either union, within the last year?

Mr. Nicoson: I object to that, first, because it calls for a conclusion of the witness, second, it assumes a fact not in evidence. The testimony of this witness at the present time is that he does not recall that he ever gave any instructions to any person about it.

Trial Examiner Kent: In view of the allegations of the complaint, I think the question may be put.

Mr. Nicoson: That calls for a legal conclusion in any event, and invades the province of the Board.

Mr. Tyre: Your Honor, the question is seeking to ask this witness did you or did you not instruct your employees to [1068] violate the provisions of the National Labor Relations Act, which undoubtedly calls for a legal conclusion as to what is a violation of the Act, which is a matter for this Board to decide.

Mr. Nicoson: Especially in view of the fact that he has testified here that he did not recall giving any instructions to anyone. He said if he personally had done anything, it was not by means of the instructions to any subordinates.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: He may answer.

Mr. Collins: You may answer.

The Witness: It is so long ago. What is it now?

Q. (By Mr. Collins): What instructions if any, have you given to your employees authorizing or instructing them to interfere with the employees' rights to join any labor organization?

Mr. Nicoson: Same objection.

Trial Examiner Kent: He may answer.

The Witness: I don't think I gave any.

Q. (By Mr. Collins): I will ask you the same question with respect to the word "restrain." Have you authorized any of your subordinates to restrain employees from joining any labor organization?

Mr. Nicoson: Same objection.

Trial Examiner Kent: The answer may be taken.

The Witness: No. [1069]

Q. (By Mr. Collins): Have you instructed any of your subordinates to coerce any of your employees into or out of either labor organization?

Mr. Nicoson: Same objection.

Trial Examiner Kent: The answer may be taken.

The Witness: What does the word "coerce" mean?

Mr. Nicoson: That is just what I was shooting for all the time. I think that is right, Mr. O'Keefe.

Q. (By Mr. Collins): You don't understand the meaning of the word "coerce"?

A. Not exactly.

(Testimony of Daniel P. O'Keefe.)

Q. Have you instructed any of your subordinates to threaten the employees with any form of punishment if they joined or did not join any labor union?

Mr. Nicoson: Same objection.

Mr. Collins: I submit, if your Honor please, that the word "threaten" is a common word and does not have a legal connotation at all except before this particular tribunal.

Trial Examiner Kent: He may answer.

Mr. Nicoson: I submit that the word "threaten" is not used in the law. That is a new proposition to be urging—I will withdraw that. But I still want my objection to stay in.

The Witness: No.

Q. (By Mr. Collins): You never did? [1070]

A. No.

Q. Have you instructed any of your employees to interfere with the rights of anyone to join any labor organizations?

Mr. Nicoson: Same objection, for the further reason it has been asked and answered. That was his first question.

Trial Examiner Kent: He may answer.

The Witness: Well, I don't know just what you mean when you say interfere with either.

Q. (By Mr. Collins): I mean to slow them down, to stop them, to obstruct them, to interrupt them. It has a number of meanings. I suppose to understand this complaint properly we would have to get Webster's Dictionary, but I am asking you to

(Testimony of Daniel P. O'Keefe.)

the best of your knowledge and your understanding of the word interfere, have you ever **instructed** anybody to interfere with the rights of your employees to join either labor organization?

Mr. Nicoson: Just a moment, please. I submit we are not bound by Mr. Collins' interpretation to the witness. The witness has indicated he does not understand from his own standpoint the meaning of the word interference, so I object to his answer being given on the ground, one, for the reasons previously stated, and second, on the ground that he has now been coached by counsel.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Do you understand the word—— [1071]

Mr. Nicoson: Just to repeat Mr. Collins' oft repeated phrase, that cannot be cured now because of what has transpired through counsel and what has transpired by what I have said. I don't think we can cure the objection by reframing the question now.

Mr. Collins: I am not reframing the question now, Mr. Examiner. I am going to ask him a new question, about the meaning of the word "interfere."

Mr. Nicoson: I know, but his Honor instructed you to reframe the question, and I am saying that it comes too late now, you can't cure the defect. I have been taught that law by Mr. Collins in this proceeding. I would like to use it now for my own advantage.

(Testimony of Daniel P. O'Keefe.)

The Witness: Am I supposed to answer something now?

Trial Examiner Kent: I don't think there is a question pending.

Q. (By Mr. Collins): The question pending is, do you understand the meaning of the word "interfere"? A. You mean by force or——

Q. No, just the word "interfere," do you understand the meaning of that word "interfere," the ordinary dictionary meaning of the word "interfere"?

A. No, I don't believe I get the exact word there. I have an idea what it means, all right.

Q. What is your understanding of the word "interfere"? [1072]

A. That I would obstruct in some way, that I might talk about intefering, meaning I will say that I was in favor of one or not in favor of another, that would be one thing, and if I tried to get in the way and prevent them from doing something. If that is the way the word "interfere" is meant, I didn't do that.

Q. Mr. O'Keefe, I am not asking you now what you did. I am asking you did you instruct any employee to interfere? A. Oh, no.

Q. With the rights of any of those people to join any labor union?

A. Oh, no, I didn't instruct anybody to do anything, that is right.

Mr. Nicoson: May I have the answer stricken

(Testimony of Daniel P. O'Keefe.)

solely for the purpose of interposing the same objection I have made to all those questions?

Trial Examiner Kent: Read the answer.

(The answer was read.)

Mr. Collins: Is there a ruling?

Trial Examiner Kent: It may be stricken.

Q. (By Mr. Collins): Did you instruct any of your employees to restrain any of the other employees in their right to join a labor organization?

Mr. Nicoson: Same objection.

The Witness: Oh, pardon me. [1073]

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): Did you instruct any of your employees to coerce anybody either in or out of any labor organization?

Mr. Nicoson: Same objection, and for the further reason it has been asked and answered. He told you he didn't know what the word "coerce" meant.

Mr. Collins: Is there a ruling?

Trial Examiner Kent: He may answer.

The Witness: I am still a little vague what the word "coerce" means, so I think I would have to answer the same as before.

Q. (By Mr. Collins): You don't know the meaning of the word "coerce"? A. No.

Q. Did you instruct any of your employees to do anything at all to stop any of your employees from joining any labor organization?

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: Just a minute, please. May I have that question read?

(The question was read.)

Mr. Nicoson: Thank you.

Mr. Collins: All right.

Q. (By Mr. Collins): You may answer.

A. I don't think so.

Q. During any of the time since November of 1942, up until [1074] this date, has the Department of Internal Revenue at any time, or any court, any Federal Court in the United States, at any time, requested the O'Keefe and Merritt Company to include in their return of profits the profits that were made for the Pioneer Electric Company?

A. No.

Q. Does the O'Keefe and Merritt Company carry workmen's compensation for the employees of the Pioneer Electric Company? A. No.

Q. Are any of the partners of the Pioneer Electric Company operating as your agents in the Pioneer Electric Company?

Mr. Nicoson: Objected to. That certainly calls for a legal conclusion, one which the witness isn't qualified to give. And further——

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Does the O'Keefe and Merritt Company have any secret interest in the Pioneer Electric Company?

Mr. Nicoson: Objected to as calling for a conclusion of the witness and invading the province of

(Testimony of Daniel P. O'Keefe.)

the Board; immaterial, irrelevant, and incompetent; for the further reason it is leading improperly.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Does the O'Keefe and Merritt Company have any interest in the Pioneer Electric Company?

Mr. Nicoson: That is objected to because it calls for a [1075] conclusion, legal conclusion, and invades the province of the Board, so far as the issues of this complaint are concerned.

Mr. Collins: I am sitting here trying to think of the simplest words I can use to find out if the O'Keefe and Merritt Company has a secret or undisclosed interest in the Pioneer Electric.

Mr. Tyre: The record will have to determine that.

Mr. Collins: That is exactly right. I want the record to have the man's——

Mr. Tyre: It is a conclusion of this witness. The record will speak for itself, what that interest is or is not.

Trial Examiner Kent: The answer to the question may be taken. Do you remember the question?

The Witness: Yes, I remember the question. The O'Keefe and Merritt Company have no interest in the Pioneer Electric Company.

Mr. Nicoson: Your Honor, I will submit that is an unfair question to put to the witness. I think by his own testimony it shows that O'Keefe and Merritt does have an interest in Pioneer Electric Company. They are interested in the Pioneer putting

(Testimony of Daniel P. O'Keefe.)

out stoves, so that O'Keefe and Merritt can sell them.

Of course they have an interest in Pioneer. I don't think Mr. O'Keefe understood the question and gave a proper answer.

The Witness: I assumed he meant a financial interest.

Mr. Nicoson: That is my objection. He didn't say anything [1076] about financial interest. He asked if they had any interest, and you said no.

Trial Examiner Kent: I think I read that into the question by implication.

Mr. Nicoson: Then I am not sure we are permitted to read things into the questions at this stage of the game.

Mr. Collins: That is all.

Trial Examiner Kent: Mr. Read, have you any questions? Or Mr. Tyre?

Mr. Tyre: Yes.

Mr. Reed No questions.

Cross-Examination

By Mr. Tyre:

Q. I think you testified, Mr. O'Keefe, that you are now president and Mr. W. J. Boyle is vice-president, and Mr. R. J. Merritt is secretary-treasurer of O'Keefe and Merritt. How long have the three of you held those respective offices?

Mr. Collins: Objected to as a compound question.

The Witness: Well, I don't see any difference in guessing at it,—

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: The answer will be taken.

The Witness: —guessing with this attorney than it was with Mr. Nicoson. I had to guess with him on that same answer. If he was here he would have heard the answer. I am sure he did. [1077]

Q. (By Mr. Tyre): Answer the question.

A. I don't know. I made that clear.

Q. Have those people been officers the past year? A. Yes.

Q. Have they been officers for the past two years? A. Yes.

Q. Have they been officers for the past three years? A. Yes.

Q. More than five years? A. Yes.

Q. They have probably been officers since 1920?

A. No. [1078]

Q. When was the change made after 1920?

A. I told you I don't know.

Q. Have they been officers for the past 10 years?

A. I would have to look that up, before I can remember.

Q. At least you know they have been officers for more than five years? A. Yes.

Q. The board of directors you testified are R. J. Merritt, W. J. Boyle, Lucille Merritt, W. J. O'Keefe and Daniel P. O'Keefe. That is the present board of directors; is that right? A. Yes.

Q. Has that same group of people had office as the board of directors for the past five years, also?

A. I don't think so.

(Testimony of Daniel P. O'Keefe.)

Q. I asume—tell me if I am wrong—for the past five years R. J. Merritt, W. J. Boyle and Daniel P. O'Keefe have been members of the board of directors; is that correct? A. That is right.

Q. Can you tell us within the last five years whether Lucille Merritt and W. J. O'Keefe have become members of the board?

A. No, Lucille Merritt has been a member of the board for a long time.

Q. As long as you have? [1079]

A. I am not sure of that, but—

Q. For at least more than five years?

A. Yes.

Q. When did Mr. W. J. O'Keefe become a member of the board? A. I don't remember.

Q. Would that be more than two years, at least?

A. I think so.

Q. I show you Board's Exhibit 13, Mr. O'Keefe, which is a lease which has been made between Pioneer and O'Keefe on November 16, 1942. I ask you whether or not prior to 1946 your company entered into any other lease arrangement with the Pioneer Electric Company.

Mr. Nicoson: May I have that question read?

(The question was read.)

The Witness: This is '42. From '42 to '45?

Mr. Tyre: 1946.

Mr. Collins: Do you mean any lease or the renewal of a lease?

Mr. Tyre: Read the question.

(The question was read.)

(Testimony of Daniel P. O'Keefe.)

The Witness: I don't remember the date of the last lease, so I can't answer that.

Q. (By Mr. Tyre): You mean there are other leases besides what is now in evidence as Board's Exhibit 13? A. I think there are two. [1080]

Mr. Nicoson: The evidence so shows.

Q. (By Mr. Tyre): And the lease arrangement, that was made in 1946?

A. Was that '46? I don't remember whether it was or not. It was right around the first of the year. I can't remember whether it took place the last of December or around the first of January, or when.

Q. I show you Board's Exhibit 19. Is that the only other lease you know of that has been made between Pioneer and O'Keefe, this Board's Exhibit 13? A. Yes.

Q. Now, I think you stated that you had a number of subcontractors doing work for O'Keefe and Merritt before Pioneer Electric Company took on its subcontracting work. Were all of these other companies doing the same type of work that you gave to Pioneer Electric Company? A. No.

Q. Were any of them doing the same kind of work? A. Yes.

Q. Do you recall when you first gave any work to Pioneer Electric Company? A. No.

Q. Would that have been about the time that lease was made, that is, Board's Exhibit 13?

A. I don't remember that. [1081]

Q. Perhaps I can refresh your memory, Mr. O'Keefe. Board's Exhibit 14 is a certified copy of a

(Testimony of Daniel P. O'Keefe.)

Certificate of Business of a Fictitious Firm Name, namely Pioneer Electric Company, and dated August 15, 1942, and is filed October 15, 1942.

Now, after examining that document, does that refresh your memory as to when you first gave Pioneer Electric Company any subcontracting work?

Mr. Collins: Just a moment. Objected to as not tending to prove or disprove anything at issue in this case; immaterial. Objected to upon the further ground it is improper redirect.

Mr. Tyre: I haven't examined the witness yet, your Honor. As far as I am concerned, this is my first opportunity.

Mr. Collins: Mr. Trial Examiner, I object to counsel even interrogating any of the witnesses. I wish to renew the objection on the ground he doesn't represent anyone who is a party to these proceedings.

If he is permitted to cross-examine, I will renew my objection and insist we abide by the rules we started out with. Is he to assist the Board with redirect, I suppose it is to be—and certainly improper redirect?

Mr. Tyre: There has been considerable, your Honor, concerning the contracts between Pioneer and O'Keefe, concerning when the work began and when it didn't begin, and what that [1082] work was. These questions have been brought out sometimes by Mr. Nicoson and sometimes by Mr. Collins. I think there is a good deal of uncertainty in the rec-

(Testimony of Daniel P. O'Keefe.)

ord right now as to the questions I am putting to the witness.

Mr. Collins: Objected to on the ground, further, this witness is not the best person qualified to testify. If he wants more information on the subject, he should subpoena somebody from the Pioneer Electric Company.

Trial Examiner Kent: I think the inquiry is proper. You may proceed.

The Witness: Well, I don't think my answer would be worth anything, because I don't issue the purchase orders. I had nothing to do with placing the orders with this firm. I haven't the slightest idea when we started giving them work. Too many things have happened since August 1942 to remember whether we placed a small order with some little firm at that time or not, I assure you.

Q. (By Mr. Tyre): Well, to your best recollection, Mr. O'Keefe, as president of O'Keefe and Merritt for the past 29 years, I think according to your own testimony——

Mr. Collins: Objected to as assuming a fact not in evidence. According to his own testimony he has been president since 1928.

Q. (By Mr. Tyre): I asked you whether or not you can recall now if you gave Pioneer Electric Company its first order from [1083] O'Keefe and Merritt prior to or after October 1942.

Mr. Collins: Just a moment, Mr. O'Keefe. I object to that on the ground it assumes a fact not in evidence. This witness testified he has a purchasing

(Testimony of Daniel P. O'Keefe.)

department and purchasing agent. He doesn't remember the small orders, whether he gave them or not or when he gave them.

Mr. Tyre: I have asked him to testify as best he can himself recall, your Honor.

Trial Examiner Kent: He may answer that, if he can.

The Witness: I assure you I can't.

Q. (By Mr. Tyre): You have no idea, Mr. O'Keefe, have you, when you gave the first order to Pioneer Electric Company?

A. No. We probably have records in our purchasing department, which would be easy to ascertain the exact date. For me to guess would be, I think, out of line altogether.

Q. Do you know what kind of work Pioneer Electric Company was doing for O'Keefe and Merritt?
A. Yes.

Q. What were they doing?

A. That is, in a general way, they were doing the electrical work.

Q. All of the electrical work?

A. Did you say all of the electrical?

Q. Yes.

A. No. We had other concerns doing some.

Q. After you gave work, that is, this electrical work, to Pioneer Electric Company, isn't it true that you thereafter did not give that same type of work to any other subcontractor?

Mr. Collins: Objected to as assuming a fact not in evidence; improper redirect examination; doesn't

(Testimony of Daniel P. O'Keefe.)

tend to prove or disprove anything at issue in this case.

Mr. Nicoson: So the record doesn't reflect a false impression of my position, I don't concede it is redirect examination; and certainly I do not want this record to show that it is redirect examination, at least, by me.

I thought I made that clear at the beginning. This may not be a bad place to restate it. I represent the National Labor Relations Board, and that is all I represent. Mr. Purver and I are the only two attorneys here authorized to represent the National Labor Relations Board.

Since the Board called Mr. O'Keefe, the Board is the only one that can have redirect examination. I do not concede that Mr. Tyre's examination is redirect or binding upon me in any way.

Mr. Collins: If that is the position of the Board, I submit it is highly irregular and prejudicial and misconduct on the part of the Trial Examiner to permit an interloper and stranger to these proceedings to come in and cross-examine these witnesses.

Trial Examiner Kent: The thing I am apprehensive about is that I did rule Mr. Tyre could participate and bring out new matter or material to the issues that hadn't been inquired into by the Board in its direct examination, or could cross-examine in regard to new matter brought out by Mr. Collins, or clear up anything that might be considered patent ambiguities.

(Testimony of Daniel P. O'Keefe.)

I think the most of this inquiry was quite well covered by Mr. Nicoson.

Mr. Nicoson: Just a minute. Don't misunderstand my position. I am certainly not contending Mr. Tyre hasn't a right to examine these witnesses. All I am trying to say is that Mr. Tyre is not speaking for the National Labor Relations Board nor for me.

Trial Examiner Kent: That is true.

Mr. Nicoson: If I fail to do something one way or the other, that certainly shouldn't bind Mr. Tyre. If he fails to do something, It certainly is not going to bind me, as long as I have breath in my lungs to speak.

Trial Examiner Kent: Oh, no. The point I was making was I thought this line of inquiry had been covered fairly completely by you in your direct examination. I don't think we ought to have repetition. [1086]

Mr. Nicoson: My recollection of the testimony doesn't accord with your Honor. I don't think this particular wiring incident, or whatever he is inquiring into, was covered by me, at least in any detail.

Mr. Tyre: My notes agree with Mr. Nicoson. I agree we want to expedite this hearing. I don't want to go over a matter that has been thoroughly covered and on which we have thorough answers, believe me. My notes don't show this has been covered.

Trial Examiner Kent: I think the particular line will be brief. I think we will take up less time

(Testimony of Daniel P. O'Keefe.)

probably by permitting the inquiry by counsel and not having continuous argument.

Mr. Collins: I take it then the position of the Trial Examiner is now that the Board's attorney didn't cover the case adequately and he is now permitting Mr. Tyre to assist the Board.

Trial Examiner Kent: No. I don't say that. My recollection may very well be faulty. I thought that the Board had gone into these matters fairly exhaustively. What I am apprehensive about is we were getting repetitious matter into the record.

Mr. Tyre: I think there is a question pending.

Trial Examiner Kent: What is the question?

(The question was read.) [1087]

Trial Examiner Kent: You may answer that if you can.

The Witness: I can't give any dates. If I just had some of these questions written down, I could call up the office and get the dates we placed the purchase orders, when the purchase orders were made out and everything else. And I could expedite matters a good deal if I had in advance what was needed, but any dates I would give are purely guesswork and I don't want to go on record here as guessing.

Trial Examiner Kent: I wonder if we are not wandering off on a collateral issue. It may have some materiality, I don't know that I *don't* want to state flatly that it hasn't, but it is pretty remote, and I wonder if it is germane to the real issues raised by

(Testimony of Daniel P. O'Keefe.)

the allegations of the complaint. Unless counsel's purpose may be, of course, to test credibility.

Q. (By Mr. Tyre): Mr. O'Keefe, I think you testified, did you not, that one of the reasons why you decided to have the Pioneer Electric Company commence to do certain of your subcontracting work was because Mr. Durant told you that it would be cheaper for him to be close by where he could supervise that work and because the other subcontractors were charging too much money for that type of work. Wasn't that your testimony?

A. I think so. [1088]

Q. After you started Pioneer Electric Company and after Mr. Durant was in a position to become sort of a supervisor of what was going on there and keep his eye over the operations, after that, you did, did you not, discontinue subcontracting to other companies the type of work that you were giving the Pioneer Electric Company?

Mr. Collins: I object to that expression "after you started the Pioneer Electric Company," as assuming a fact that is not in evidence.

Mr. Tyre: All right, we will change it.

Mr. Collins: All right, we will change it so that it reads after Pioneer Electric Company was started.

The Witness: We still gave out some of the wiring work to Barcoe Manufacturing Company and it seems to me to—I think Bill would remember more, I think Littlejohn Electric, but I am not sure about

(Testimony of Daniel P. O'Keefe.)

that. I think there were several places that we had doing some electric work too.

Q. (By Mr. Tyre): After Pioneer Electric Company started to do your subcontracting, most of the other subcontracting you were giving to other companies was terminated, was it not?

A. Most of the electrical work, yes.

Q. I think you also testified that Mr. Ben Platz used to work for O'Keefe and Merritt and then he came back to work for Pioneer Electric Company after that company had been established, is that correct? [1089]

Mr. Collins: Just a moment. Objected to as having been asked and answered.

Mr. Tyre: I just asked him if that is what he testified to.

Mr. Collins: The record is the best evidence of what he testified to.

Mr. Tyre: To save time, your Honor, he could either answer it yes or no.

Mr. Collins: We can save time for three days by letting this attorney interrogate the witness unnecessarily.

Trial Examiner Kent: Is the challenge to the record? What was the testimony?

Mr. Tyre: I think that was the testimony. Will you stipulate that was what he testified.?

Mr. Collins: Yes, it was substantially that.

Mr. Tyre: Fine.

Q. (By Mr. Tyre): Now, how long, Mr.

(Testimony of Daniel P. O'Keefe.)

O'Keefe, had Mr. Platz been employed by O'Keefe and Merritt?

A. I don't know.

Q. Well, would it have been more than five years or less than five years?

Mr. Collins: Objected to as not tending to prove or disprove anything at issue in this case. Platz could have worked for 50 different concerns. I fail to see the remotest relevancy of this type of interrogation.

Mr. Tyre: I think it has considerable relevancy, your Honor.

Trial Examiner Kent: Is he one of the group of the Pioneer Electric?

Mr. Tyre: He is one of the group that set up the Pioneer Electric Company.

Mr. Collins: Just a moment, if your Honor please. I submit that statement is not supported by any testimony in this case, that Mr. Ben Platz was one of the group that set up the Pioneer Electric Company. The evidence is that it is a co-partnership and is composed of a man by the name of O'Keefe, Willis Boyle, Lew Boyle, and nowhere in any of the records does the name of Ben Platz appear, and I state that it is highly prejudicial misconduct on the part of the Trial Examiner to permit this counsel, who is representing no one here except himself, to interrogate this witness.

Trial Examiner Kent: By the way, that raises another point, another question in my mind. The Pioneer Electric is mentioned as a co-partnership

(Testimony of Daniel P. O'Keefe.)

in the complaint, and you have just stated it was a co-partnership. The California law may vary, I am familiar with what is a co-partnership elsewhere, people can be doing business under an assumed name and not be necessarily a co-partnership, or the relationship between the parties doing business under an assumed name may not be those of partners. The California law may be different, or I thought it might be.

Mr. Nicoson: Your Honor, I had in my possession until just a second ago a series of three articles of co-partnership. Some time during the course of this hearing either I or Mr. Collins intends to put them in.

Mr. Collins: I will stipulate that the articles of co-partnership may go into evidence at this time.

Trial Examiner Kent: No, if the formal documents are coming in, that will answer my inquiry, but some of the exhibits now just raised the question in my mind, and I thought this was the time to mention that. Well, you may proceed, then.

The Witness: What was the question?

Mr. Tyre: To save time, I will restate it.

Q. (By Mr. Tyre): Had Mr. Ben Platz worked for O'Keefe and Merritt Company more than five years prior to the time he terminated his employment there.

Mr. Collins: Just a moment. Objected to as assuming a fact not in evidence. The testimony was that Mr. Platz had been working he thought for

(Testimony of Daniel P. O'Keefe.)

some other company prior to the date he went to work for the Pioneer Electric. The testimony of this witness was that Mr. Platz had worked for O'Keefe and Merritt, he thought, at some time or other for a while prior to the forming of this Pioneer Electric Company.

Mr. Tyre: That doesn't interfere with my question at all, your Honor. If the reporter will read it, you will see that. [1092]

Trial Examiner Kent: Read the question.

(Question read.)

A. I don't know.

Q. (By Mr. Tyre): Had he been working there for more than two years?

A. Oh, yes, he had worked more than two years.

Q. Now, I think you testified that the Pioneer Electric Company was formed and he went to work for that company, is that right?

Mr. Collins: Just a moment. Objected to as assuming *a not* in evidence. This witness is not an employee, officer or agent of the Pioneer Electric Company. Interrogating him as to the internal affairs of Pioneer Electric Company is highly irregular. He is not qualified to testify. It is not the best evidence.

Mr. Tyre: There has been considerable examination, your Honor, of this witness, as to the formation and other structure of the Pioneer Electric Company. I don't see what would debar me from asking the same kind of questions the other counsel have asked.

(Testimony of Daniel P. O'Keefe.)

Mr. Collins: I submit, Mr. Examiner, there has been no examination of this witness as to the formation of the Pioneer Electric Company. It has been entirely limited to the lease. [1093]

Trial Examiner Kent: Yes, my recollection was if there was any inquiry it was sort of collateral to the matters concerning the lease and the agreements.

Mr. Tyre: As a matter of fact, your Honor, the name of Ben Platz was even used by this witness, and he was asked whether or not Ben Platz did not work for the Pioneer Electric Company. I am trying to find out when now, your Honor, so that can be clarified.

Trial Examiner Kent: You might save time by taking the answer.

The Witness: You surely know in advance that I don't know dates, or I haven't the slightest idea. You should know that, I mean I am not sure of the date, and I would be just guessing at it.

Mr. Tyre: Will you read back the question so the witness can answer instead of arguing with counsel.

(Question read.)

A. Yes. I don't know, that is, whether he went to work when they started or not, but he was there shortly after they started.

Q. (By Mr. Tyre): And Mr. Ben Platz was terminated from Pioneer Electric Company around V-J Day, is that right?

A. I don't know.

(Testimony of Daniel P. O'Keefe.)

Q. What relation, Mr. O'Keefe, is Evelyn B. Boyle to Willis M. Boyle or W. J. Boyle?

Mr. Collins: Just a moment. Objected to as assuming a fact not in evidence.

Mr. Tyre: If she is related at all.

The Witness: Evelyn Boyle, did you say?

Q. (By Mr. Tyre): Evelyn D. Boyle.

A. Evelyn Boyle, to which Boyle?

Q. To any of the Boyles, W. J. Boyle or Lewis Boyle. Let me put Board's Exhibit 22 before you. It might help you refresh your memory.

Mr. Collins: Objected to upon the ground it does not tend to prove or disprove anything at issue in this case. Is it the contention of the attorney now interrogating this witness that because these people are related they can't go into business for themselves? If that is the purpose of this interrogation, it is certainly going far afield and would be contrary to any known principle of law which has been taught over a thousand years, that you cannot be related and still have a separate business.

Trial Examiner Kent: The answer may be taken.

The Witness: Well, I am not very well acquainted with Evelyn Boyle, but she is either Lew Boyle's wife or daughter. I think it is the wife.

Q. (By Mr. Tyre): What is the relationship, if any, of Blanche Boyle?

A. Blanche Boyle is the wife of W. J. Boyle.

Q. What is the relationship, if any, of John E. Boyle?

A. John E.?

(Testimony of Daniel P. O'Keefe.)

Q. That is the last one.

A. I guess that is the fellow that I know as Jack. He is the son of W. J. Boyle.

Q. Now, as a matter of fact, Mr. O'Keefe, Lewis Boyle has never been actively engaged in the business of the Pioneer Electric Company, has he?

Mr. Collins: Just a moment. Objected to as assuming a fact not in evidence, and objected to upon the further ground it is not the best evidence. This witness is not qualified to testify what happened at the Pioneer Electric Company.

Mr. Tyre. All he has to do is testify if he knows.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Tyre): Do you know whether or not Lewis M. Boyle has been active in the Pioneer Electric Company from the time it started up to date?

A. I had nothing at all to do with the Pioneer Electric Company. I never saw their books nor had anything to do with it in any way, and if he was not active, I wouldn't know it. I wouldn't have had anything to do with it.

Q. Mr. O'Keefe, the record shows that an election took place at your plant on November 20th, 1945, which was a Tuesday. I think you have already testified that you gave a speech about that time. Do you recall whether or not that speech was given at noontime? [1096]

A. I believe it was.

Q. That was on the same day of the election, was it not? A. I don't remember.

(Testimony of Daniel P. O'Keefe.)

Q. It might have been?

A. It might have been.

Q. What is Mr. L. G. Mitchell's position now with O'Keefe and Merritt?

A. I guess you are trying to test my memory or see if I was telling the truth yesterday. He is still auditor today.

Mr. Garrett: Is he the one that played the stock market?

The Witness: Yes.

Q. (By Mr. Tyre): You don't know of your own knowledge, do you, Mr. O'Keefe, exactly how many employees there were on the payroll of the Pioneer Electric Company on November 20, 1945, do you?

Mr. Collins: Objected to as having been asked and answered.

Mr. Tyre: No, I don't think it has, your Honor.

Trial Examiner Kent: Wasn't it stipulated?

Mr. Collins: It was stipulated it was 180 as of November 20th. The evidence of the witness was that they had some employees, but he didn't know how many. [1097]

Mr. Tyre: And I think he was testifying to something he said he was not sure about, and I am asking him of his own knowledge does he know whether or not Pioneer Electric Company had any employees on November 20, 1945.

Trial Examiner Kent: You may answer.

The Witness: Yes, I saw employees around

(Testimony of Daniel P. O'Keefe.)

there who I am sure were working for Pioneer Electric.

Q. (By Mr. Tyre): But you don't know of your own knowledge whether or not——

A. No, I had nothing at all to do with them. Whether they were on the payroll or not I wouldn't know.

Mr. Tyre: That is all.

Mr. Collins: Is that all?

Mr. Garrett: No questions.

Mr. Collins: Mr. O'Keefe, this lease that they have identified here——

Mr. Nicoson: I would like to ask him three or four questions. Shall I ask him first?

Mr. Collins: Yes.

Redirect Examination

By Mr. Nicoson:

Q. Now, Mr. O'Keefe, in your cross-examination by Mr. Collins, I believe it was, you mentioned Bucknell. Who is Bucknell?

A. He is an engineer, electrical engineer.

Q. Do you know his first name, given name?

A. No. They call him Buck. I don't know what his name is.

Q. Was it your testimony that he was working for the Pioneer Electric Company?

A. Yes, he is working for Pioneer Electric, yes.

Mr. Collins: His first name is Wilson.

Mr. Nicoson: Wilson?

Mr. Collins: Wilson is his first name.

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Nicoson): Also I think you testified to the question of Mr. Collins that after V-J Day Pioneer laid off some of its employees, you didn't know how many. I will ask you if O'Keefe and Merritt absorbed any of those employees, if you know.

A. I wouldn't know.

Q. At the time of entering into the second lease with Pioneer, which is in evidence as Board's Exhibit 19 and which I show you, was any of this electrical wiring being done within the confines of the O'Keefe and Merritt plant at that time?

A. When?

Q. At the time you entered into this last lease.

A. I don't know whether it was on that particular day. You mean since then or what?

Q. At or about that time.

A. Oh, from then on, they are still at it, yes, they are still doing it now. [1099]

Q. Was that in connection with the generators or was it in connection with the production of some other—

A. In connection with generators.

Q. They are still producing some generators, is that right?

A. Yes.

Trial Examiner Kent: That wiring you talk about, I suppose is winding armatures and fields of generators?

The Witness: Yes, that is it, yes.

Q. (By Mr. Nicoson): You stated, I believe,

(Testimony of Daniel P. O'Keefe.)

that O'Keefe and Merritt now has employees. Will you state for the record what the jobs are with relation to what work they do? Is that question clear to you?

A. That is clear. I would like to suggest that a witness who will be following me can answer that very much better than I can. I can only answer what I think is true, and I know that Fred Rotter, that is his job, and he will be able to answer it correctly and I am only guessing.

Q. Thank you, sir. With respect to those three talks or speeches which are in evidence and on which you were asked by Mr. Tyre a moment ago as to whether or not that occurred at noon, I will ask you whether or not it is not a fact they occurred directly after the lunch period? [1100]

A. I don't remember.

Q. Is it your recollection that they occurred during the lunch period? [1100]

A. I don't remember whether it was during the lunch period. It was around noon, but I don't know whether it was the lunch period or before or after. It was right around noon.

Q. Then you are not in a position to state. Do you know what the lunch period is for the men out there at O'Keefe and Merritt, at the time you made the speeches?

A. I am not sure whether we had two periods or just one period then or not. We had at one time 11:30 to 12:00 and 12:00 to 12:30, a staggered lunch period, so as to keep the lunch stand from being

(Testimony of Daniel P. O'Keefe.)

crowded. Whether it was in effect at that time or not I don't remember.

Q. If I may, Mr. O'Keefe, go back to this wiring business that I asked you about before, the wiring that was done there, was that wiring, at least the wiring we are talking about, was that on orders that you already had or were they new orders for generators?

Mr. Collins: I object to the question as not clear now, Mr. Nicoson.

Q. (By Mr. Nicoson): Do you understand what I mean?

A. No. At what particular time?

Mr. Collins: That is what I mean.

Mr. Nicoson: Yes.

Q. (By Mr. Nicoson): I asked you, as I recall, at the time you entered into the second lease with the Pioneer if you were still doing any wiring and you said you were doing some. Is that about a fair statement of your testimony?

A. The second lease that we were doing some?

Q. Yes.

A. Yes. If I did, that was a mistake.

Q. Well, all right. Was Pioneer doing some?

A. Yes, I would say they were.

Q. Now, that work is that? I mean, was that on some left-over orders or was it on some new orders? I mean by that, was that part of the subcontract or rather as the result of the relation between O'Keefe and Merritt and Pioneer which originally happened when you had the lease agreement and so forth?

(Testimony of Daniel P. O'Keefe.)

A. I think I can clear that up with what I told you this morning. That wiring is all done on material that Pioneer purchased through us from the Signal Corps.

Q. I see, and they are completing that job?

A. They are completing those units and selling them, yes.

Q. Prior to January 2nd, 1946, that is the time you entered into the second agreement with Pioneer, did you have some arrangement for workmen's compensation for the O'Keefe and Merritt employees, is that right?

A. We carry our own, if that is what you mean.

Q. And what happened to that workmen's compensation carriage after the lease was entered into on January 2nd, 1946, if you know? [1102]

Mr. Collins: Mr. Nicoson, maybe I can clear up the situation by a statement. I offer to stipulate that O'Keefe and Merritt Company is a self assurer in the State of California by consent of the Industrial Accident Commission, having on file with the Secretary of State or Treasurer a bond in the amount of I believe \$40,000.00. I will also offer to stipulate that the Pioneer Electric Company has a policy of insurance from an insurance carrier, which policy I have with me and I will stipulate it in evidence if you care to have it.

Mr. Nicoson: I think I can accept your statement, but what I am interested in is what happened to it after January 2nd.

Mr. Collins: What happened to what?

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: O'Keefe and Merritt's carriage and bond and so forth.

The Witness: I can easily answer that. The bond remains up there indefinitely, and whether we have 50 employees or 500, that is the only expense involved. We have our own little hospital there and so forth, so nothing happens to it at all. It just goes on.

Q. (By Mr. Nicoson): It remains the same?

A. Yes.

Q. When did Pioneer start making gas appliances, if it did?

A. Well, it isn't—when you say make, I don't know just what that word means. You know, we usually use the word make when you have completed something and it is ready for sale. But if you mean when they began fabricating—I mean there are so many different—— [1104]

Mr. Nicoson: I will take fabricating.

The Witness: Well, I would say it seems to me it was February 4th, as I recall.

Q. (By Mr. Nicoson): And at that time O'Keefe and Merritt—if this is correct, you may answer yes, and if it is not, you will correct me—at that time O'Keefe and Merritt had some unfinished jobs on gas appliances and stoves and so forth on the floor, did it not?

A. I don't know whether we had unfinished. We had some work started, I would say.

Q. And Pioneer just stepped in and started and finished that work up?

A. That is right.

Mr. Nicoson: That is all.

(Testimony of Daniel P. O'Keefe.)

Recross-Examination

By Mr. Collins:

Q. Mr. O'Keefe, Pioneer Electric Company's lease, which is in evidence, provides for cost plus, isn't that true, as the term is generally used?

A. I think so.

Q. So it doesn't make any difference whether there was work in progress or not, whatever they did there in the line of work they are paid for on the cost plus basis?

A. That is right.

Q. When you said a moment ago that you now had your bond and your policy up, you didn't mean by that, did you, that the Pioneer Electric Company's employees are being covered by the O'Keefe and Merritt self-insurance bond? [1105]

A. No, I think you explained it afterwards and said the policy they had.

Q. I wanted the record very clearly to show that the policies are entirely separate.

A. Well, the self-insurance policy could not, to my understanding, cover any other employees than those who are working for us.

Q. And that is the situation as of today?

A. Yes.

Q. I don't know whether you know this or not, but I will ask this question, and I have here the policy under which the Pioneer Electric Company's employees are covers, and the broker's name is J. E. Schrober.

A. No.

(Testimony of Daniel P. O'Keefe.)

Q. Those generators that you mentioned a while ago, all of the work on the generators is now being done by Pioneer Company, is it not?

A. Yes, the press work and everything else, that is stamping the stators and all the rest of it.

Q. At the time that you testified that you believed that some of the employees of the Pioneer Electric Company were laid off, there were also a great number of employees of the O'Keefe and Merritt Company laid off at the same time, isn't that the case? [1106]

A. I would imagine approximately the same time, yes.

Q. Now, with respect to this testimony concerning Ben Platz, I don't know whether the record is clear on that or not. Had Ben Platz worked for the O'Keefe and Merritt Company within a year immediately prior to that date that you executed this first lease with the Pioneer?

A. I don't know.

Q. Are you acquainted with the fact that Ben Platz went out and went in business for himself building water wells after he quit working for O'Keefe and Merritt?

A. No, I understand he was with a certified accountant firm.

Q. Well, he wasn't working for O'Keefe and Merritt, as you recall prior?

A. No.

Q. Does Ben Platz work for you now, O'Keefe and Merritt Company?

A. No.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: You are not trying to impeach my witness, are you, Mr. Collins? He testified yesterday he was working for a C.P.A. That is what he said.

Q. (By Mr. Collins): You stated, as I recall, a moment ago, that some of the work was given to Vardeo Company after the Pioneer Electric went into business. Was that the same type of work that the Pioneer Electric Company was doing?

A. Yes; wiring stators.

Q. Was it work that the Pioneer Electric Company wanted to accept?

A. I don't know.

Q. Was it the policy of the United States Government to have various suppliers have all the different parts during the war, as communicated to you?

Mr. Nicoson: Various what, appliers?

Mr. Collins: Suppliers. S-u-p-p-l-i-e-r-s.

The Witness: Well, I understand it was, yes.

Q. (By Mr. Collins): As it was communicated to you, they advised you in the event of bombing and so on they wanted different suppliers to have these parts ready; isn't that the case?

A. Well, I don't remember the bombing or anything. But we had a certain length of time to get it out. I don't know just why we farmed some of it out to Vardeo and, I think, to the other firms, whether the Pioneer was too busy or behind with their work or just what reason.

Q. Just the ordinary conduct of your business?

A. That is right.

(Testimony of Daniel P. O'Keefe.)

Q. Now, this lease, this first lease you have identified here, the one that was executed on November 15, 1942, carries the provision in it that it shall run for a term of one year from the 16th day of November, 1942, at a rental of \$500.00 per month. At the end of the first year, did you stop collecting rent from them, or what happened? [1108]

A. No.

Q. What happened after the end of that first year?

A. They stayed on and paid rent. There was nobody——

Q. Month to month tenancy from then on; is that the case?

Mr. Nicoson: Objected to as calling for a legal conclusion of the witness.

Mr. Tyre: Also leading.

Q. (By Mr. Collins): I will ask you, did you tell them to get out? A. No.

Q. Did you receive your regular monthly rent from them? A. Yes.

Mr. Collins: That is all.

Mr. Nicoson: No further questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Trial Examiner Kent: We might take a five-minute recess at this time.

Mr. Collins: May this witness be excused, subject to being recalled for redirect on behalf of the respondent's case in chief, in the event it is necessary to have him back?

Mr. Nicoson: Not on redirect.

Mr. Collins: The further respondent's case in chief.

Trial Examiner Kent: Yes, you can bring him back if you wish.

(A short recess was taken.)

Trial Examiner Kent: We might proceed.

Mr. Nicoson: Mr. Rotter, please.

FRED F. ROTTER,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. Will you state your name for the record, Mr. Rotter, please?

A. Fred F. Rotter.

Q. Your business or occupation?

A. Personnel manager, Pioneer Electric.

Q. On November 20, 1945, what was your business or occupation?

A. Personnel manager of O'Keefe and Merritt Company.

Q. Were you also personnel manager of O'Keefe and Merritt Company on November 5, 1945?

A. Yes.

Q. And on November 13th and 14th; is that correct? A. Yes. [1110]

Mr. Nicoson: Please mark this as Board's Exhibit 12-B and show this as 12-A.

(Testimony of Fred F. Rotter.)

(The documents referred to were marked as Board's Exhibits 12-A and 12-B, for identification.)

Mr. Nicoson: Let the record show that previously, during the testimony of the Witness Spallino, I had marked for identification as Board's Exhibit 12 what I thought I would be able to show was the payroll list and also poll list used in the election; and that during the examination of Mr. Spallino, when it appeared that he didn't check but only part of the document which at that time was more than four pages, I amended my offer at that time to include only four pages which I had shown the witness.

I have now, for further identification, had that portion of it marked Board's Exhibit 12-A. I have also had the remaining portion marked Board's Exhibit 12-B.

Q. (By Mr. Nicoson): I show you, Mr. Rotter, Board's Exhibit 12-A and Board's Exhibit 12-B, and ask you to examine them and state, if you know, what they are.

A. Lists of the employees of O'Keefe and Merritt Company payroll, as of some time in October or November.

Q. I show you a document which is in evidence as Board's Exhibit 4, and direct your attention to the portion where it says, "payroll period for eligibility November 4, 1945." Was this document prepared in accordance with that date, do you know?

A. November 4th?

Q. Yes. A. Yes. [1111]

(Testimony of Fred F. Rotter.)

Q. I think you testified this was, or if you didn't, please do, this was taken from the payroll list of O'Keefe and Merritt for that period?

A. That is right.

Q. Under your supervision and direction; is that correct? A. Yes.

Q. Now, I will call your attention to the very last page of the document marked Board's Exhibit 12-B, to some handwriting there in pencil. None of that was on it at the time you submitted the payroll list to the Board; is that correct?

A. That is correct; no writing on it.

Q. Also, that is true as to the red marks you see on Board's Exhibit 12-B and with respect to the blue marks on Board's Exhibit 12-A?

A. That is correct.

Mr. Nicoson: I now offer both Board's Exhibits 12-A and 12-B in evidence.

Trial Examiner Kent: They may be admitted.

(The documents heretofore marked as Board's Exhibits Nos. 12-A and 12-B, for identification, were received in evidence.)

[Board's Exhibits 12-A and 12-B set forth on pages 1694 to 1703.]

Mr. Nicoson: Please mark these documents for identification.

(The documents referred to were marked as Board's Exhibits Nos. 23 and 24, for identification.)

(Testimony of Fred F. Rotter.)

Q. (By Mr. Nicoson): I show you another document, which, for the purpose of identification, has been marked Board's Exhibit 23, and ask you to look at it and examine it and state, if you know, what it is.

A. Notice from the National Labor Relations Board to the effect where posters pertaining to an election shall be posted.

Q. And the places where the notice was posted; is that correct?

A. That is right.

Q. I show you a document which, for the purpose of identification, has been marked Board's Exhibit 24, and ask you to examine it and state if that isn't a notice or copy of notice which you referred to in Board's 23?

A. That is a copy.

Q. And also, on Board's Exhibit 23, that is your signature where it says "F. F. Rotter"; is that correct?

A. That is right.

Q. And these are the notices that you posted in those six places referred to in Board's Exhibit 23?

A. Yes.

Mr. Nicoson: I ask that both Board's Exhibits 23 and 24 be put in evidence, and show them to the parties. [1113]

Trial Examiner Kent: They may be received.

(The documents heretofore marked as Board's Exhibits Nos. 23 and 24, for identification, were received in evidence.)

(Testimony of Fred F. Rotter.)

BOARD'S EXHIBIT No. 23

AFFIDAVIT OF POSTING

To: National Labor Relations Board

Twenty-first Region

111 W. 7th St., Board of Trade Building

Los Angeles, California

In re: O'Keefe & Merritt Company

Case No. 21-R-3101

The undersigned hereby states that Notices of Election in the above-entitled matter were posted personally by him in the following places on the 16th day of November, 1945.

1. Shipping Department
2. Refrigeration-Service Repair Department
3. Enamel Department
4. Tool Room and Press Department
5. Foundry Department
6. At main time clock in Entrance and Exit aisle.

/s/ F. F. ROTTER

/s/ J. K. SLOAN,

Witness.

[Endorsed]: Received Nov. 19, 1945.

[Endorsed]: Filed March 21, 1946.

(Testimony of Fred F. Rotter.)

BOARD'S EXHIBIT No. 24

21-R-3101

United States of America
National Labor Relations Board

NOTICE OF ELECTION

Rights of Employees

Under Section 7 of the National Labor Relations Act, employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Purpose of Election

An election by secret ballot will be conducted under the supervision of the undersigned Regional Director of the National Labor Relations Board among the eligible voters described herein to determine the representative, if any, desired by them, for the purpose of collective bargaining with their employer.

Secret Ballot

The election will be by secret ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the elec-

(Testimony of Fred F. Rotter.)

tion. Your attention is called to Section 12 of the National Labor Relations Act:

Any person who shall willfully resist, prevent, impede or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

An agent of the Board will hand a ballot to each eligible voter at the voting place. The voter will then mark the ballot in secret in a voting booth and fold it. The voter will then personally deposit the folded ballot in a ballot box under the supervision of an agent of the Board. A majority of the valid ballots cast will determine the results of the election.

Incorporated herein for your information only is a copy of the official ballot.

Authorized Observers

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or his agent in charge of the election. These observers will (a) act as checkers at the voting place and at the counting of ballots, (b) assist in the identification of voters, (c) challenge voters and ballots, and (d) otherwise assist the Regional Director or his agent.

Eligibility Rules

Employees described under Voting Unit in this

(Testimony of Fred F. Rotter.)

Notice of Election who did not work during the designated pay-roll period because they were ill or on vacation or temporarily laid off, and employees in the Armed Forces of the United States who present themselves in person at the polls, shall be eligible to vote. Employees who have quit or been discharged for cause since the designated pay-roll period, and who have not been rehired or reinstated prior to the date of the election, shall not be eligible to vote.

Voting Unit

All production and maintenance employees, who were in the employ of the Company during the pay-roll period ending November 4, 1945, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expediters, pattern-makers and pattern-maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

Time and Place of Election

On Tuesday, November 20, 1945, between the hours 4:30 p.m. and 5:30 p.m. at the Employee Entrance by Time Clocks.

United States of America
National Labor Relations Board
Official Secret Ballot
O'Keefe & Merritt Company

(Testimony of Fred F. Rotter.)

This ballot is to determine the collective bargaining representative, if any, for the unit in which you are employed.

If you spoil this ballot, return it to the Board Agent for a new one.

Mark an "X" in the square of your choice.

United Steelworkers of America, Stove Division Local 1981, C.I.O. ☐

Neither ☐

Los Angeles Metal Trades Council, A.F.L. ☐

Do not sign this ballot. Fold and drop in ballot box.

(Sample)

STEWART MEACHAM,
Regional Director.

[Endorsed]: Filed March 21, 1946.

Q. (By Mr. Nicoson): Now, is it also true, Mr. Rotter, that during the election you acted as one of the talliers of the ballots?

A. Tally checker.

Q. I show you a document which, for the purposes of identification, has been marked Board's Exhibit 5, and I will ask you to state, if you ever saw that document before. A. I did.

Q. Where did you first see the document?

A. On the evening of November 20th, after the election.

Q. Is it correct to say that document was pre-

(Testimony of Fred F. Rotter.)

pared by Mrs. Bernice Phoenix of the National Labor Relations Board? A. That is correct.

Q. And a copy of it was given to you?

A. That is right.

Q. That is your signature appearing on there under the name of O'Keefe and Merritt Company; is that correct? A. That is right.

Q. And under the name "Los Angeles Metal Trades Council" appears what appears to be the signature of H. B. McMurray. Was that put on there about the same time yours was, in [1114] your presence? A. Yes.

Q. And under the "United Steelworkers of America, Stove Division 1981," appears the signature of G. J. Conway. Was that put on about the same time? A. That is right. [1115]

Mr. Nicoson: I offer in evidence Board's Exhibit 5.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 5, for identification, was received in evidence.)

(Testimony of Fred F. Rotter.)

BOARD'S EXHIBIT No. 5

United States of America
National Labor Relations Board

Case No. 21-R-3101

Date issued Nov. 20, 1945

In the Matter of
O'KEEFE & MERRITT COMPANY
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION LOCAL 1981, C.I.O.

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 341
2. Void ballots 2
3. Votes cast for.....
4. Votes cast for United Steelworkers of America, Stove Division Local 1981 C.I.O.177
5. Votes cast for Los Angeles Metal Trades Council, A.F.L.....114
6. Votes cast against participating labor organization(s) 5
7. Valid votes counted (sum of 3, 4, 5, and 6).....296
8. Challenged ballotsNone

(Testimony of Fred F. Rotter.)

9. Valid votes counted plus challenged ballots (sum of 7 and 8).....296
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes has (~~not~~) been cast for United Steelworkers of America Stove Division Local 1981, C.I.O.
- /s/ BERNICE T. PHOENIX,
For the Regional Director.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

/s/ F. F. ROTTER,
For O'Keefe & Merritt
Company.

/s/ H. B. M. MURRY,
For Los Angeles Metal
Trades Council, A.F.L.

/s/ G. J. CONWAY,
For United Steelworkers of
America, Stove Division
Local 1981, C.I.O.

Instructions to Board Agent Preparing
Tally of Ballot
Items 1-9

Items 1 to 9, inclusive, are self-explanatory, and

(Testimony of Fred F. Rotter.)

appropriate insertions should first be made in these items.

Items 10-11

If the number of votes cast for one of the participating labor organizations (items 3, 4, or 5) is a majority of the "Valid votes counted plus challenged ballots" (item 9), strike the word "(not)" in item 11 and write in the name of the organization on the blank line there provided.

In a single union election (Yes-No ballot), if the "Votes cast against the participating labor organization" (item 6) is a majority of the "Valid votes counted plus challenged ballots" (item 9), write in the name of the participating organization on the labor organizations" on the blank line in item 11.

In a multiple union election, if the number of "Votes cast against participating labor organizations" (item 6) is a majority of the "Valid votes counted plus challenged ballots" (item 9), write in the words "any (or either) of the participating labor organizations" on the blank line in item 11.

If no choice offered on the ballot received a majority of the "Valid votes counted plus challenged ballots" (item 9), but if the number of votes cast for the highest choice (including the no union choice) is a majority of "Valid votes counted" (item 7), it will be necessary to rule on the challenged ballots and subsequently issue a Revised Tally of Ballots. In this event, strike the word "(not)" in item 10 and strike the whole of item 11.

(Testimony of Fred F. Rotter.)

Be sure that all copies of the tally of ballots are dated and signed.

[Endorsed]: Filed March 13, 1946.

Q. (By Mr. Nicoson): I show you another document which has been marked for identification as Board's Exhibit 6, and ask you to state if there-after directly after the election, that is, within two or three days, if you did not receive a copy of that in the United States mail from the Board?

A. We did.

Mr. Nicoson: I offer this in evidence, Board's Exhibit 6.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 6, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 6

United States of America
National Labor Relations Board

Case No. 21 R 3101

In the Matter of
O'KEEFE & MERRITT COMPANY
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION LOCAL 1981, C.I.O.

(Testimony of Fred F. Rotter.)

CONSENT DETERMINATION OF
REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the ballot.

A majority of the valid votes have been cast for the Union indicated below. Pursuant to Section 8 of the Agreement for Consent Election the undersigned hereby finds and determines that United Steelworkers of America, Stove Division Local 1981, C.I.O., is the exclusive representative of all the employees in the unit defined in Section 2 of the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, this 28th day of November, 1945.

/s/ STEWART MEACHAM,

Regional Director, National
Labor Relations Board.

[Endorsed]: Filed March 13, 1946.

(Testimony of Fred F. Rotter.)

Q. (By Mr. Nicoson): Mr. Rotter, we have had some testimony here about the employees of O'Keefe and Merritt, as of the present time, and particularly between the present time and after February 4, 1946. Were you acquainted with the number of employees that O'Keefe and Merritt has now and did have during that period?

A. Not the specific number.

Q. Could you give us the approximate amount?

A. 35 to 40. [1116]

Q. Can you give us the type of those employees, that is, what they do, classifications?

A. What they are doing now?

Q. Yes.

A. Specifically I could not; other than continuing in their employment, they had as of the latter part of January.

Q. Can you state, Mr. Rotter, were any of those employees now in the employ of O'Keefe and Merritt performing any manufacturing operation?

A. There are none, to my knowledge.

Q. Is it correct to say that those employees are engaged in clerical and service work, those employees of O'Keefe and Merritt, at the present time?

Mr. Collins: Mr. Nicoson, I may be able to shorten it by stipulation. I am willing to try. I will stipulate that O'Keefe and Merritt employees are now engaged in office, clerical, service, shipping and sales, and new construction. There might be one or two other employees possibly doing some

(Testimony of Fred F. Rotter.)

building maintenance, I am not certain. Generally speaking, that is the situation.

Mr. Nicoson: I accept that stipulation. No further questions.

Mr. Tyre: No questions.

Cross-Examination

By Mr. Collins:

Q. This list you have just identified, [1117] Mr. Rotter, as having been the list of those who participated in the Board-conducted election, were there any employees of the Pioneer Electric Company on that list? A. No.

Mr. Collins: No further questions.

Mr. Nicoson: I would like to ask another question, just to complete the record.

Redirect Examination

By Mr. Nicoson:

Q. You testified at the beginning that you were now personnel manager for Pioneer Electric Company; is that correct? A. Yes.

Q. When did you so become?

A. As of February 4, 1946.

Q. Prior to that time you had been for O'Keefe and Merritt personnel manager? A. Yes.

Q. For how long?

A. Anywhere from four to five, to eight years.

Mr. Nicoson: That is all.

Mr. Collins: Mr. Rotter, in your duties as personnel manager, you have nothing to do with any of the help except that in the factory; isn't that true?

The Witness: That is right.

(Testimony of Fred F. Rotter.)

Mr. Collins: So your duties are substantially the same [1118] for the new company as they were for the prior employer?

The Witness: Yes.

Mr. Nicoson: No further questions.

Mr. Collins: Nothing further.

(Witness excused.)

Mr. Nicoson: I think I ought to tell Mr. Garrett what I did while he was out. I started before I knew he was gone. I want to let him know what happened.

Mr. Garrett: Exhibits 23 and 24?

Mr. Nicoson: I got more than that in. I got in Board's Exhibits 5 and 6.

Will you please mark this for identification?

(Thereupon, the document referred to was marked as Board's Exhibit No 25, for identification.)

Mr. Nicoson: Mr. Rotter, will you take the stand again?

FRED ROTTER

a witness called by and on behalf of the National Labor Relations Board, having been previously sworn, was recalled and testified further as follows:

Direct Examination

By Mr. Nicoson:

Q. I show you another document, Mr. Rotter, which has been marked for identification as Board's Exhibit 25, and I ask you to examine it and state, if you know, what it is.

(Testimony of Fred F. Rotter.)

A. A designation of representatives to receive tally of [1119] ballot.

Q. Did those two men, McNinch——

A. Assisted in the tallying of the ballots.

Q. ——McNinch and McArthur assist in the tallying of the ballots? A. Yes.

Q. And did they also act as observers for the company? A. That is right.

Mr. Nicoson: I show this to the parties and offer it as Board's Exhibit 25.

Trial Examiner Kent: Board's Exhibit 25 may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 25, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 25
DESIGNATION OF REPRESENTATIVE TO
RECEIVE TALLY OF BALLOTS
In the Matter of O'Keefe & Merritt Company. 21-R-3101.

The undersigned designates

1. Civilin Guy McNinch
2. Charles McArthur

to accept service of a copy of the Tally of Ballots at the polling place.

**O'KEEFE & MERRITT
COMPANY**

By /s/ F. F. ROTTER,

Personnel Manager.

[Endorsed]: Date November 16, 1945.

[Endorsed]: Filed March 22, 1946.

(Witness excused.)

Mr. Garrett: Recall Mr. Spallino. He hasn't been submitted to cross-examination by myself since his redirect.

Trial Examiner Kent: Very well.

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, having been previously sworn, was recalled and testified further as follows:

Recross-Examination

By Mr. Garrett:

Q. Now, about this rehearsal election, Mr. Spallino, tell me about that; would you?

A. Well, the day before this rehearsal election they passed [1120] out sample ballots outside the employment entrance, whether you wanted the C.I.O. or yes or no. The following morning there was a stand out there with the American flag and they had a fellow out there at the box taking in the ballots.

Q. Who staged this rehearsal election? Was it staged by the National Labor Relations Board?

A. No, it was staged by the C.I.O.

Q. C.I.O.?

A. Yes; United Steelworkers.

Q. You say they had an American flag there?

A. Yes.

Q. Where did that come from; do you know?

A. That is a surprise to me, too. I walked up there and they had the ballot box there and they

had the American flag there, and I passed by and threw my ballot in.

(Testimony of Charles Spallino.)

Q. That was a demonstration by the president of the C.I.O., and it was about a week before the actual election?

A. I wouldn't say a week, probably two or three weeks before.

Q. What part did you have in this mock election?

A. I was just one of the voters, that is all.

Q. You were, along with the other employees, instructed at that time how to mark your ballot, so you would know what to do when the regular election came along; is that correct?

A. How was that?

Mr. Garrett: Read the question. [1121]

(The question was read.)

The Witness: No.

Q. (By Mr. Garrett): Who was there representing the C.I.O.? A. Who was there?

Mr. Garrett: Read the question.

(The question was read.)

The Witness: All this trial election?

Trial Examiner Kent: Yes.

The Witness: I don't recall who was at the ballot box, because I didn't pay any attention. I was going to work. I threw my ballot in and went in the plant.

Q. (By Mr. Garrett): Did you see anyone there whom you knew was identified with the C.I.O., either as an organizer or business agent or employee of the C.I.O.?

(Testimony of Charles Spallino.)

A. Oh, it could have been this fellow Otto, that is all I know him by; Otto, kind of a stout fellow. I see him there, all that I see there that I can recall. I went right in the plant.

Q. What time was this mock election taking place, what time of day?

A. It was in the morning just before work. I would say it was about 7:30 or a quarter to 8:00, somewhere around there.

Q. Well, did you know it was going to take place before you came there to deposit it, your ballot?

A. Well, the ballots were passed the night before.

Q. You are going to have to answer my questions. A. That is an answer.

Mr. Nicoson: I think that is an answer.

The Witness: I did know the night before, sure.

Q. (By Mr. Garrett): All right. You did know the night before. Who told you?

A. The ballot itself.

Q. How long before this mock election took place did you know it was going to happen?

A. I didn't know before that.

Q. You didn't know before when?

A. Before the pamphlets were given out or the ballot or whatever you want to call it.

Q. When were they given out?

A. The day before the election.

Q. Where?

A. In front of the employees' entrance.

Q. Who by? A. United Steelworkers.

(Testimony of Charles Spallino.)

Q. Did you know they were going to be given out at that time? A. I did not.

Q. Didn't Louie Ortega and you have any conversation about it? A. No.

Q. You were surprised when you came out of the plant and [1123] saw them giving out these sample ballots?

A. I was surprised, every night we saw ballots out there or leaflets, either the A.F.L. or C.I.O. would have leaflets there every night, or every other night before the election.

Q. This time you got a sample ballot is that right?

A. Wasn't a sample ballot. It was a ballot, a trial.

Q. What did the ballot look like? Did it look just like the one you used a week later when you voted? A. No, not exactly like that.

Q. What was the difference?

A. I don't remember the difference. The difference was in the government election it had three squares there; this here only had two; it says whether you want to vote C.I.O. or not.

Q. Only had one. A. Yes, I know.

Q. Vote for the C.I.O., yes or no?

A. It was yes or no.

Q. You took the ballots the night before, and then what did you do with them? You took them home with you; did you?

A. Yes, I took mine and put it in my pocket and

(Testimony of Charles Spallino.)

got in the car. I am anxious to get going when I get off from work.

Q. You didn't know anything about this mock election before you received the sample ballot?

Mr. Tyre: Objected to; asked and answered.

Trial Examiner Kent: He may answer. [1124]

The Witness: I did not know before.

Q. (By Mr. Garrett): You are shop steward for the C.I.O.?

A. I was elected shop steward after the election, after over a month or maybe a little later than that at one of the meetings I was elected shop steward.

Q. Was that by a secret ballot?

A. No. There was no secret ballot.

Q. Were there ballots?

A. It was out in the open.

Q. Did the ballot say elect Charlie Spallino or not have any shop steward or what?

A. I don't get that.

Q. What did the ballot say when you were elected?

A. They didn't have any ballot—

Q. They didn't any any election either, did they?

A. Yes, there was an election.

Q. Who counted the ballots?

A. There were no ballots.

Q. Who counted the ballots in the N.L.R.B. election?

A. I wouldn't know, I told you that.

Q. You didn't have anything to do with counting the ballots, did you? A. No.

(Testimony of Charles Spallino.)

Q. Did you see any ballots there that were passed out by the C.I.O. the week before? [1125]

A. No, I did not.

Q. What was the vote by which you were elected stop steward?

Mr. Tyre: I object to that, your Honor. This is improper cross-examination. It is a field which is entirely new.

Mr. Garrett: Don't you want to know who were your members there?

Mr. Tyre: Nobody has gone over that before. It is incompetent, irrelevant and immaterial, has no bearing on the issues in this case.

Trial Examiner Kent: What is the purpose of the inquiry, Mr. Garrett?

Mr. Garrett: This man here is evidently a specialist in elections. He is appointed an observer by the N.L.R.B. for the A.F.of L. in an election——

Mr. Nicoson: I object to that statement as being contrary——

Mr. Garrett: He is an expert on his own admission. I want to see how good he is.

Mr. Nicoson: It is contrary to the evidence. The evidence did not sustain either.

Mr. Tyre: I think the obvious answer now is the objection, your Honor.

Mr. Garrett: What would you do in a union to rehearse its members in order to get them to vote right? [1126]

Trial Examiner Kent: It seems to me that is

(Testimony of Charles Spallino.)

going into the internal workings of a labor organization.

Mr. Garrett: A political party.

Trial Examiner Kent: I will sustain the objection. [1127]

Mr. Garrett: Well, maybe I am going a little far afield.

Q. (By Mr. Garrett): Mr. Spallino, I want to ask you whether you know who voted for you for shop steward besides yourself. I assume you would tell us if the election was—you can volunteer if you want to.

Mr. Tyre: There is an objection and I take it that has been sustained. Is that right, your Honor?

Trial Examiner Kent: Yes, the other objection was sustained, yes.

Q. (By Mr. Garrett): Mr. Ortega now is president of the C.I.O. there in the plant, is he not, Mr. Lewie Ortega is president of the C.I.O. at the O'Keefe and Merritt Company?

A. That is right.

Q. And you are the chief steward?

A. That is right.

Q. Were you both elected at the same time?

A. That is right.

Q. And in the same way?

A. And in the same way.

Mr. Nicoson: And by the C.I.O. I suppose counsel refers to the United Steelworkers.

Mr. Garrett: You have——

Mr. Nicoson: Am I correct, Mr. Garrett, that

(Testimony of Charles Spallino.)

by the [1128] term C.I.O. you refer to the United Steelworkers? I admit my question and possible objection comes a little late.

Mr. Reed: I submit, Mr. Examiner, that I believe the witness was inferring that he meant the Steelworkers when he said C.I.O. the same as the counsel for the Board takes it to mean when he says he was organizing for the A.F.of L. that he thereby meant that he was organizing for all the crafts in the A.F.of L.

Mr. Nicoson: If that is the understanding and the witness so understood it, I have no objection.

Q. (By Mr. Garrett): Do you know what labor organization you belong to, Mr. Spallino?

A. What organization I belong to?

Q. Yes.

A. The United Steelworkers. I can find the local for you in just a second.

Q. Do you belong to any local of that organization? A. Yes, I do.

Q. What local? A. This——

Q. You don't need to refer to your notes. You can remember, can't you?

A. This is not a note. This is my card.

Q. You are the——

Mr. Nicoson: Wait just a minute. Let him answer that question. [1129]

Mr. Tyre: Let him finish.

Mr. Garrett: May the record show the witness is reaching into his pocket and pulling out papers?

(Testimony of Charles Spallino.)

Mr. Nicoson: May the record show further that he has reached in his pocket and brought out his dues card and he is referring to that to find out the local number.

Trial Examiner Kent: The record may so show.

Mr. Garrett: Do you know whether the United Steelworkers are affiliated with the A.F.of L. or C.I.O.?

Mr. Nicoson: Are you abandoning your previous question?

Mr. Garrett: No, he answered it.

Mr. Nicoson: We didn't hear it.

The Witness: Local 1981.

Q. (By Mr. Garrett): Are you sure that is the number? Better look at your card again.

A. Want me to look again?

Mr. Tyre: Just a minute. That is enough. That is argument.

Trial Examiner Kent: No, let's proceed.

Q. (By Mr. Garrett): Is that organization affiliated with the C.I.O.? A. I think so.

Q. As an official of the C.I.O., can you tell me why the United Steelworkers Union are referred to on their literature as U.S.A.? [1131]

Mr. Tyre: I will object. That is immaterial and irrelevant.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): I have here a piece of literature, which is literature that is put out by your local, Local 1981. You know about all the literature that goes out, do you not?

(Testimony of Charles Spallino.)

A. I haven't had a chance to see that. This is something late, I think.

Q. You will read it when you get a chance to?

A. Yes, yes, I will.

Q. As a matter of fact, you had something to do with preparing it, didn't you? Well, I have one here that has just been handed me, entitled "Local 1981 News." I want to read you the first page of it so you can see whether you can identify this.

Mr. Nicoson: I object to that as being immaterial and an improper way to refresh the witness' recollection, by reading it in the record. He should show it to him, and I object to it going in the record in any guise, at least for the present. If he wants him to see it, let him show it to him.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): I hand you what purports to be a copy of Local 1981 News bearing no date but apparently of recent [1131] date since it refers to your testimony here in this hearing, and ask you whether you have ever seen it before. Have you read the publication that I have just shown you?

A. I have.

Mr. Garrett: May I have that marked the exhibit next in order for identification for the unions, parties to the contract?

(The document referred to was marked as A.F.of L. Exhibit No. 1, for identification.)

Q. (By Mr. Garrett): This pamphlet says at

(Testimony of Charles Spallino.)

the beginning "Local 1981 News, Hearings before the National Labor Relations Board——"

Mr. Nicoson: I object to reading any portion of the pamphlet in here. He brought it, he stated, for the purpose of refreshing the witness' recollection. The witness has now seen it. I object to reading it in the record. If he wants to make it a part of the record, he should offer it, so that we get a chance to object to it.

Q. (By Mr. Garrett): Have you read the first page of this? A. That is all I have read.

Q. Are all the statements on the first page true?

Mr. Tyre: Objection, immaterial and irrelevant.

The Witness: I didn't write the stuff.

Mr. Tyre: Just a minute.

Trial Examiner Kent: Wait a minute, now.

Mr. Nicoson: I join in the same objection, being immaterial.

Q. (By Mr. Garrett): You read that, didn't you? A. Yes.

Trial Examiner Kent: Wait a minute. I will sustain the objection, unless counsel shows the purpose and can show that it is germane and material to the issues.

Q. (By Mr. Garrett): Is it a fact that you were chief shop steward of C.I.O. at the time this pamphlet was written?

Mr. Nicoson: Objected to, because it is impossible to answer, because it bears no date, and there is nothing in here to show when it was issued; for the further reason it is immaterial, irrelevant and

(Testimony of Charles Spallino.)

incompetent, and not proper redirect examination or recross-examination. I could think of a few more if I had time.

Trial Examiner Kent: What's the purpose of the present line of inquiry?

Mr. Garrett: Impeachment.

Trial Examiner Kent: How?

Mr. Garrett: Impeachment of this witness, trying to show his interest and the character of his testimony here. I think I have a right, particularly, to show whether or not he is using these proceedings in his organizing activities and how and for whom.

Trial Examiner Kent: He has testified that he is [1133] presently the union's chief shop steward. What additional purpose will the introduction of that document serve?

Mr. Garrett: Here is an account given concerning this man's views and also his testimony, evidently supplied by him to whoever joined in writing this pamphlet. The pamphlet is issued by his own organization. [1134] The pamphlet refers to his testimony in this action. The pamphlet shows that on the first page is written apparently for the purpose of providing a build-up for the witness, talks about his long term of service with the company and his long term of service as president of the Five and Over Club, then it tells how——

Mr. Nicoson: Just a minute. I am going to object to his reading and paraphrasing this document

(Testimony of Charles Spallino.)

into the evidence. If he has an offer, let him present it so we can get at it and do so in the proper manner.

Mr. Garrett: I want to know specifically what he means when he says——

Mr. Nicoson: If you want to do that off the record, all right, but I am certainly objecting——

Trial Examiner Kent: Are you going to offer it, Mr. Garrett?

Mr. Garrett: Well, I haven't had it identified. Now, of course this witness disclaims knowledge of it, and I should like to question him regarding some of the alleged facts set forth here. They all relate to him and his testimony.

Mr. Collins: I think it is highly pertinent.

Mr. Garrett: He says——

Mr. Nicoson: Wait just a minute. I am going to object to this going in the record, any of it. If you are going to [1135] read it to the Trial Examiner, we will go off the record.

Trial Examiner Kent: If you want to make an offer, I will consider the exhibit and rule on it.

Mr. Garrett: No, I am not going to offer the exhibit now. I will have to get Mr. McCaskell or someone else who wrote it to identify it. Right now it is only a paper in the case, as long as the witness says he doesn't know anything about it.

Q. (By Mr. Garrett): You have seen those things issued before, haven't you, Mr. Spallino?

A. Sure. I have never seen them in the making. I see them like anybody else does.

(Testimony of Charles Spallino.)

Q. Don't you feel any responsibility for what is incorporated in this? A. No.

Mr. Tyre: Objection.

Mr. Nicoson: Note my objection.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): This publication here speaks about a deal between Mr. Roberts and the company——

Mr. Nicoson: I object to paraphrasing and putting it in that way. I *remove* the remark of counsel now be stricken. I further move that your Honor admonish him to stop these proceedings which are highly improper, which you have ruled time and time and again that he cannot do, and which he [1136] insists on doing. I think we have more important things to do than to sit around here and waste time.

Trial Examiner Kent: The remark may be stricken.

Q. (By Mr. Garrett): Did you have anything to do with engineering a deal between Mr. Roberts and the O'Keefe and Merritt Company?

Mr. Nicoson: I object to that as immaterial, also assuming a fact not in evidence.

Trial Examiner Kent: Read the question, Mr. Reporter.

(Question read.)

Trial Examiner Kent: The answer may be taken to that. You may answer.

The Witness: Did I ever——

(Testimony of Charles Spallino.)

Trial Examiner Kent: Read it to him. Now listen to it.

(Question re-read.)

A. No.

Q. (By Mr. Garrett): Are you trying to arrange any deal between Mr. Despol and the O'Keefe and Merritt Company?

Mr. Tyre: Objection, immaterial and irrelevant.

Trial Examiner Kent: The answer may be taken.

A. I am not arranging any deals with anybody.

Q. (By Mr. Garrett): Are you going to serve the C.I.O. as you have in the past served the A.F.of L.?

Mr. Nicoson: Object.

The Witness: We had an election—— [1137]

Mr. Nicoson: Objected to as immaterial and irrelevant and incompetent, and it is certainly degrading to the witness, as Mr. Garrett accused me of doing yesterday.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Garrett): Did you ever notice that anybody was trying to keep anyone in the plant from getting a wage increase except in the case of a few favored stooges?

Mr. Tyre: Just a minute, your Honor. Mr. Garrett is now engaging in the very same practice to which Mr. Nicoson objected and for which he was criticizing him, and I think your Honor admonished him. Now he is again resorting to the same sort of contemptuous tactics. I think it is contemptuous of the Trial Examiner for anybody

(Testimony of Charles Spallino.)

to be taking up the time of counsel with this sort of ridiculous question.

Mr. Collins: I don't mind him taking up my time. I think it is highly pertinent.

The Witness: Could we go off the record just a minute so I can say a word?

Mr. Nicoson: You keep quiet.

Trial Examiner Kent: Is there a question pending, Mr. Reporter?

(Question read.)

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): Have you ever represented to anybody, Mr. Spallino—— [1138]

Mr. Tyre: Objected to.

Q. (By Mr. Garrett): ——that anyone in connection with the O'Keefe and Merritt plant is conspiring to violate a government certification?

Mr. Nicoson: Objected to as calling for a legal conclusion of the witness.

Mr. Tyre: May the record show that Mr. Garrett is still reading from the same document which you have told him he should not be doing three times now, the objection has been sustained.

Mr. Nicoson: More than that.

Trial Examiner Kent: Read that question.

Mr. Nicoson: We ought to have some end to this now, if your Honor please. You have ruled that he can't go into that unless he wants to offer it so that we can get at it in a proper manner. I submit that it is highly improper to permit him

(Testimony of Charles Spallino.)

to keep on going over and over and over the things that you say he may not do.

Trial Examiner Kent: If that is the source of your information, Mr. Garrett, I do think it is questionable. If you want to have that document identified and then offer it, I will then consider it and make a formal ruling.

Q. (By Mr. Garrett): Will you tell us the reason why you distributed the C.I.O. literature before the Sunday meeting and why you chose the toilet as the place to distribute that literature?

A. I didn't distribute any literature.

Q. Didn't you testify on direct that before you went to that C.I.O. meeting that Sunday in 1944 that you participated in putting out literature for the meeting?

Mr. Nicoson: I submit that that is not a proper summation of the witness' testimony, and object to it, because it assumes a fact not in evidence.

Mr. Garrett: He testified he distributed literature for the C.I.O.

Mr. Nicoson: He did not.

Mr. Garrett: About the meeting on Slauson Boulevard on a Sunday in 1944. [1140]

Mr. Nicoson: He did not say such a thing.

Trial Examiner Kent: There is a challenge to the record. I would like to see the record on that. My recollection is——

Mr. Garrett: It will be found there in almost the last sentence of his redirect by Mr. Nicoson. That is on March 20th in the morning. Reading

(Testimony of Charles Spallino.)

from Page 926 of the transcript, at which Mr. Nicoson was examining you, question by Mr. Nicoson—

Mr. Nicoson: By Mr. Tyre.

Mr. Garrett: No, question by Mr. Tyre, that is right.

“Q. When did you distribute any cards?

“A. It was before that Sunday meeting that I went to the C.I.O.

“Q. Where did you distribute them?

“A. In one of the lavatories in the plant.

“Q. About how many cards did you distribute? A. About six or eight.

“Q. Have you distributed any others besides those six or eight?

“A. Not in the plant.

“Mr. Tyre: That is all.”

Q. (By Mr. Garrett): Do you recall giving that testimony? Now, will you kindly answer my question. Why did you use the toilet as the place to distribute those cards?

Mr. Tyre: Objection, irrelevant and immaterial, has no [1141] bearing on the issues involved in this case.

The Witness: May I——

Trial Examiner Kent: No, the answer may be taken. You may answer.

The Witness: Why?

Trial Examiner Kent: No, that was not the question. I think it was where.

Mr. Garrett: No, why.

Mr. Tyre: That was why I objected.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Oh, I will sustain the objection.

The Witness: Well, your Honor, I wouldn't take up——

Trial Examiner Kent: Never mind.

Q. (By Mr. Garrett): Were these cards that were distributed in the toilet issued by the C.I.O.?

A. That is right.

Q. Where did you get them?

A. I got them outside from one of the fellows.

Q. From whom?

A. From one of the fellows.

Q. When did you first meet Mr. Despol, how long was it after the mock election?

A. It was just right after that.

Q. Was it at the mock election?

A. Right after that, I said.

Q. How soon after? [1142]

A. Oh, it might have been a couple of days or so after.

Q. Where did you meet him?

A. He came to my home, him and Louie Ortega.

Q. Beg your pardon?

A. He and Louie Ortega came to my home.

Q. And that was before the election of the National Labor Relations Board?

A. That is right.

Q. And about what time did they come to your home?

A. Oh, I would say about six or six-thirty in the evening.

(Testimony of Charles Spallino.)

Q. Did they come by appointment? Did you know they were coming? A. Yes.

Q. How did they arrange the meeting?

A. How did they arrange the meeting?

Q. How was the meeting arranged?

A. Well, Louie Ortega called me and told me that him and John Despol was going to be over at my house at 6:00 o'clock.

Q. Did Mr. Ortega ever tell you how long he had known Mr. Despol?

A. No, I never asked.

Q. Did he ever tell you whether or not he was working for the C.I.O.?

A. He was not working for the C.I.O. He was trying to organize the place. [1143]

Q. Did he ever tell you whether or not he was an organizer for the C.I.O.? A. No.

Q. Did he ever tell you that he had been a paid organizer for the C.I.O. in the Brown-Saltman Furniture Company some years previous?

A. No.

Q. Who was present when you and Mr. Ortega and Mr. Despol talked at your home?

A. Who was present?

Q. That is right.

A. Just us three. My wife was in the house.

Q. Did you make any arrangements then as to how you were to act as observer in the N.L.R.B. election?

A. I was told not take the job as observer, to refuse it, which I did.

(Testimony of Charles Spallino.)

Q. Was it arranged that Mr. Louie Ortega would be an observer for the C.I.O.?

A. That is right.

Q. And isn't it a fact that it was arranged that you would be an observer for the A.F. of L.?

A. Like I stated before, I was not supposed to take any part in that election.

Q. Why was that? A. I don't know.

Mr. Tyre: Object. It calls for a conclusion, your Honor.

Mr. Nicoson: Yes, and it is immaterial.

Trial Examiner Kent: Sustain the objection.

Mr. Garrett: Withdraw that.

Q. (By Mr. Garrett): Did Mr. Despol tell you why you were not to take any part in the election?

Mr. Tyre: Object to that, your Honor, as immaterial and calls for a conclusion.

Trial Examiner Kent: He may answer.

The Witness: No, he didn't tell me why.

Q. (By Mr. Garrett): The fact of the matter is he told you that you were not to reveal the fact that you were working for the C.I.O. but were to continue to pretend that you were working for the A. F. of L., isn't that right?

A. No, being my position as president of the Five and Over Club, I could not take any part at the election.

Q. He knew you were pretending to work for the A. F. of L., didn't he?

Mr. Tyre: Objection, calls for a conclusion as to what Mr. Despol knew.

(Testimony of Charles Spallino.)

Mr. Nicoson: I join in that.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): What did he tell you in that respect?

Mr. Nicoson: Objected to as assuming a fact not in evidence. [1145]

The Witness: I don't remember.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): How long did you and Mr. Ortega and Mr. Despol talk in that case?

A. As a matter of a few minutes.

Q. Then did they leave? A. Yes.

Q. Together? A. Yes.

Q. Can you recall anything that was said and the conversation?

Mr. Nicoson: That is objected to as immaterial, irrelevant, and incompetent.

Trial Examiner Kent: The answer may be taken.

The Witness: I don't remember what was all said.

Q. (By Mr. Garrett): Do you recall anything that was said?

Mr. Nicoson: That is objected to as having been asked and answered. He already said there were some things said. As an addition to that, do you want him to go over the same thing again?

Mr. Garrett: I withdraw the question.

The Witness: May I have permission to speak?

Mr. Tyre: No, you may not. Answer the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Tell us what was said during that conversation by each of you, in so far as you remember? [1146]

Mr. Nicoson: Object to that as having been asked and answered. For anything in addition he wants to bring out I think that may be a proper question. As to those questions he has already asked and gotten answers about, I submit it is repetition.

Trial Examiner Kent: I think it is repetition. I will grant the objection. Unduly repetitious.

Mr. Nicoson: Thank you.

The Witness: I have something very important to say out in the open.

Mr. Garrett: I want the record to show I am hurt and greatly taken aback at his Honor's ruling, but I guess we will have to abide by it.

The Witness: I was told at 2:00 o'clock——

Mr. Nicoson: Just a minute. I object to any voluntary statements of the witness. I ask your Honor again to admonish the witness to only answer question properly put to him.

Trial Examiner Kent: I think you had better do that, Mr. Spallino. We will probably get along faster.

Mr. Garrett: All right.

Q. (By Mr. Garrett): You had this conversation, anyhow, with Mr. Despol and Mr. Ortega and something was said by each of you at that conversation? A. Naturally.

Q. But it didn't last long? [1147]

A. No, it didn't last long.

(Testimony of Charles Spallino.)

Q. Did you, as a result of what was said at that conversation, do anything?

A. Did I do anything?

Q. Yes. A. Yes, I refused——

Q. As a result of anything that was told you by Mr. Ortega and Mr. Despol, did you take some action as a result of what was said?

A. Yes, I refused the job as the observer at the election.

Q. When were you offered the job?

A. I was offered by—well, I was told that Mr. Roberts had suggested—that he told me himself that they had suggested I be an observer for the A.F.L. I naturally refused it. I told him I wasn't going to take any part.

Q. Did you do anything else, as a result of anything you were told at that meeting with Mr. Ortega and Mr. Despol, which you haven't been able to relate to me?

A. Not that I can remember.

Q. Did you have a subsequent meeting with Mr. Despol?

A. What kind of a meeting is that?

Q. Later on, after the first one?

A. I think it was after the election.

Q. None between that first meeting and the time of the election? [1148]

A. No, not that I can recall.

Q. Do you know why Mr. Despol came out to your house to see you?

(Testimony of Charles Spallino.)

Mr. Tyre: Objection. It calls for a conclusion; irrelevant and immaterial.

Mr. Nicoson: Objected to; repetitious.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): You have never been to Mr. Despol's house; have you? A. No.

Q. You spoke of union speeches at the Five and Over Club, Mr. Spallino. Did you ever hear any speeches in the Five and Over Club against labor unions?

A. In my time as president, you mean?

Q. I mean, did you ever hear any speeches, referring to the Five and Over Club, against labor unions?

A. Not while I was president.

Q. Well, did you while you were vice-president?

A. I heard some, yes.

Q. Did you make any yourself?

A. I don't remember ever making one.

Q. You mean you don't remember making any speeches to the Five and Over Club or you don't remember making any speeches against labor unions at the Five and Over Club?

A. We never discussed unions in our plant while I was an [1149] officer, as the president.

Q. When you were vice-president, though, you hear some speeches against labor unions in the Five and Over Club?

A. Like I said before, in the past we fought labor unions of all kinds. We didn't have to have

(Testimony of Charles Spallino.)

any unions. Then came the decision on having the labor union. We decided which one we wanted. I got the one I wanted, and I am sticking by it.

Q. Who made this decision about labor unions?

A. We, the employees, at the election.

Q. Did the policy of the Five and Over Club remain anti-union up to the time of that election?

Mr. Nicoson: I object to that as having been asked and answered about five or ten times. It is certainly repetitious and not recross examination; otherwise, immaterial, irrelevant; serves only as surplusage in the record and consumes too much time.

Trial Examiner Kent: I am sorry, the record is not clear. In other words, I haven't a clear recollection. I will let the answer be taken.

Read the question.

(The question was read.)

The Witness: It was for all time, until this came up.

Q. (By Mr. Garrett): Until when?

A. Until this—that we had to join some union in order to sell our product. [1150]

Mr. Garrett: I have no further questions.

Here is the exhibit for identification.

Mr. Collins: I would like to ask Mr. Spallino one question.

Mr. Spallino, you stated you passed out C.I.O. cards in the toilet. Were you being paid for this time by the O'Keefe and Merritt Company?

(Testimony of Charles Spallino.)

The Witness: I suppose you could put it that way.

Mr. Collins: That is all.

Mr. Nicoson: No questions.

Trial Examiner Kent: Are there any further questions?

Mr. Garrett: No further questions.

(Witness excused.) [1151]

Mr. Collins: I notice it is almost 5:00 o'clock. I have been religiously carrying a large bundle of papers to and from this hearing every day. It has lasted for some time, now. I believe if we went off the record about two or three minutes I might arrive at some sort of a stipulation with the Board's attorney, Mr. Nicoson.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: I have just shown to counsel for the Board what purports to be all the sales, nearly all the sales and use tax returns for the Board of Equalization for the State of California for the Pioneer Electric Company during the term it has been in business, starting back in 1942 and bringing it up to date.

I have also shown him the quarterly returns of the California Department of Employment from the inception to date of the Pioneer Electric Company.

I have shown him the Social Security returns of the Department of Internal Revenue of the Pioneer

Electric Company, from the date of its inception up to date, including the income tax returns of the company for the same period.

The Board's counsel states to me he has no use for them. Now, he has examined them. They were matters that were brought in pursuant to the subpoena duces tecum. They are bulky [1152] records. I don't like to carry them back and forth every day. I was wondering if they may be marked for identification, with the understanding they may be removed. My people will have to have these records to make—as a matter of fact, under the Income Tax Law they have to maintain them for four years, under criminal penalties. So I am asking the Trial Examiner for some sort of a ruling as to what I may do with these.

I feel they should be part of my case, to substantiate the allegation the Pioneer is a separate legal entity, making all the returns that were customarily filed by the business in this state.

Mr. Nicoson: Let the record show, so far as the Board is concerned, they have examined those records. There is nothing in there we intend to use in the way of evidence.

We will excuse any further production of these particular documents as the result of the issuance of the subpoena duces tecum. I don't want to become custodian of them. I don't object to having them marked for identification.

Trial Examiner Kent: You have the Board's statement. You retain and offer them at the proper time. That would save your bringing them back and

forth. Offer them at the proper time, those you think are material.

Mr. Collins: Mr. Trial Examiner, these records are very bulky. I am not going to be able to leave them with the [1153] records. I am wondering if you would care to take them at this time and at various times during the proceeding look at them and possibly dictate into the record that part you deem pertinent. I can't leave them, there are too many of them to make copies.

Mr. Nicoson: I object to the Trial Examiner reading anything into the record he deems pertinent; it is not part of the evidence.

Trial Examiner Kent: The Board's attorney has stated he has considered them and, in substance, they have been produced pursuant to subpoena. He doesn't intend to use any of them as part of his case.

Mr. Collins: May I have these marked for identification and reserve the right to withdraw them later on if I deem it is necessary? I don't want to carry them around from day to day while this proceeding is going on.

Trial Examiner Kent: I wonder what the purpose of having them marked is unless you intend to offer them?

Mr. Collins: I do intend to offer them. The Board's attorney has already examined them. It will save us the trouble of going through them again.

I will offer for identification as respondent's next in order the sales and use tax returns for the Board of Equalization.

Trial Examiner Kent: It may be marked. [1154]

(The documents referred to were marked as Respondent's Exhibit No. 4, for identification.)

Mr. Nicoson: This is only for identification?

Mr. Collins: Yes. Respondent's Exhibit 5, quarterly returns, California Department of Employment.

(The documents referred to were marked as Respondent's Exhibit No. 5, for identification.)

Mr. Collins: Respondent's Exhibit 6, Social Security returns, Department of Internal Revenue.

(The documents referred to were marked as Respondent's Exhibit No. 6, for identification.)

Mr. Collins: As Respondent's Exhibit 7, four policies of insurance covering Workmen's Compensation.

(The documents referred to were marked as Respondent's Exhibit No. 7, for identification.)

Mr. Collins: As Respondent's Exhibit 8, 10 letter sized sheets being communications between the War Department Office of the Undersecretary, Price Adjustment Bureau, the Army Service Force, Signal Corps, Cost Analysis Agency and the Pioneer Electric Company, dealing generally with the question of renegotiation.

(The documents referred to were marked as Respondent's Exhibit No. 8, for identification.)

Mr. Collins: Subject to being withdrawn if they are not admitted in evidence or even though they are admitted in [1155] evidence later on, summation should be taken of them for the reasons heretofore stated.

Trial Examiner Kent: The question of withdrawal, they haven't been formally offered and formally denied. At present they stand as just being marked for identification, according to the descriptive terms used by counsel in identifying them.

Mr. Collins: It will be practically impossible to make copies of these policies of insurance. At the same time, the current policies are essential in the event an employee is injured. We might have to prove we have a policy.

Trial Examiner Kent: I would suggest the local insurance agent that wrote the insurance would probably furnish you a blank copy and you can make a copy of it if it is necessary, or have a photo-static copy made.

We will adjourn until 9:30 tomorrow.

(Whereupon, at 5:05 o'clock, p.m., March 21, 1946, an adjournment was taken until 9:30 o'clock a.m., on Friday, March 22, 1946.) [1156]

Friday, March 22, 1946

10:00 o'Clock A.M.

Trial Examiner Kent: You might proceed.

Mr. Nicoson: Please mark this document for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 26, for identification.)

Mr. Nicoson: At this time, if your Honor please, I have had marked for identification as Board's Exhibit 26 a mimeographed copy of the contract

entered into between the various AFL unions and the Pioneer Electric Company.

I have talked with counsel here and I understand that it is permissible, they will permit me to put it in without further foundation, subject to the adding to it at a later date the classifications and wage scales which are referred to in the contract as Exhibit A, and which are not attached to this document at this present time.

I have shown it to all the parties. I ask it be admitted now as Board's Exhibit 26.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 26, for identification, was received in evidence.)

[Board's Exhibit No. 26 set forth on pages 1723 to 1738.]

Mr. Garrett: We will stipulate it may go in subject to correction when we have an opportunity to compare it with the original. [1161]

Mr. Collins: I will join in that stipulation.

Trial Examiner Kent: Subject to further comparison?

Mr. Garrett: Yes.

Trial Examiner Kent: Yes, I think on the ground of fairness any prepared copy of an exhibit that goes in——

Mr. Garrett: Is that 26?

Trial Examiner Kent: ——the parties may have an opportunity to further compare for errors.

Mr. Nicoson: I assume, your Honor, that check-

ing and any corrections will be made before this hearing is over.

Trial Examiner Kent: Oh, yes.

Mr. Nicoson: If not, then that will not affect the validity of the documents?

Trial Examiner Kent: That is true. Yes, counsel may have an opportunity to withdraw it for a reasonable time, in order to do that.

Mr. Nicoson: Please mark these documents for identification.

(Thereupon, the documents referred to was marked as Board's Exhibits Nos. 27, 28 and 29, for identification.)

Mr. Nicoson: I have also had marked for identification the duplicate and original of three articles of co-partnership with respect to the Pioneer Electric Company. They have been marked Board's Exhibit 27, Board's Exhibit 28, and Board's Exhibit 29. [1162]

Board's Exhibit 27 is the Articles of Co-partnership that were entered into on the 15th day of August, 1942;

Board's Exhibit 28 is the Articles of Co-partnership made on the first day of January, 1944;

Board's Exhibit 29 is the Articles of Co-partnership made on the 15th day of November, 1945.

Mr. Collins and I have stipulated that they may be received in evidence without further foundation.

I offer them subject to other counsel's comments or objections. Let the record show I show them to the parties.

(Documents were exhibited to counsel.)

Mr. Nicoson: I have now shown Board's Exhibit 27, 28 and 29 to the parties, and I think I have heretofore offered them for the record. If I have not, I will offer them again.

Trial Examiner Kent: Hearing no objections, they may be admitted.

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 27, 28 and 29, for identification, were received in evidence.)

[Board's Exhibits Nos. 27, 28, and 29 set forth on pages 1738 to 1752.]

Mr. Nicoson: It is stipulated by and between Mr. Collins on behalf of the Pioneer Electric Company and myself on behalf of the Board that with respect to the Pioneer Electric Company business, the amounts stated in our stipulation with respect to O'Keefe & Merritt are substantially the same with respect to Pioneer Electric Company, that is, the annual business is in excess of \$2,000,000.00, and that ten per cent is shipped out of the state. I offer to stipulate to that, and I think Mr. Collins agrees with me. Is that correct?

Mr. Collins: Yes, I will so stipulate.

Mr. Nicoson: The Board rests.

Trial Examiner Kent: Let the record so show.

Mr. Collins: I will call Mr.—

Mr. Garrett: At this time, if your Honor please, we ask for a continuance until the end of next week for the purpose of preparing our case.

Trial Examiner Kent: To what?

Mr. Garrett: At this time, if your Honor please, the unions, parties to the contract, represented by

me, are asking for the continuance which has been mentioned in connection with our prior motion at the beginning of this hearing.

Trial Examiner Kent: Well, we had substantially a three-day continuance, to permit counsel time for further preparation, at the opening of the hearing. It is now Friday morning, a little after 10:00 o'clock, but we do not sit tomorrow morning. I am inclined to think that a short continuance, the balance of this day, would help and probably facilitate obtaining a shorter and maybe a better record, but——

Mr. Garrett: We desire to have——

Trial Examiner Kent: There is another angle here, of [1164] course.

Mr. Garrett: We desire to have at least Monday also for the purpose of conferences which cannot be arranged until then.

Mr. Collins: Mr. Trial Examiner, a witness on behalf of the Pioneer Electric Company, William Durant, who has been mentioned frequently in these proceedings, was ready to testify on the 6th of March, I believe it was, when this was originally called. He came into court on instructions from Mr. Nicoson, I believe it was one day last week, prepared to testify, and I think it was Monday of this week he received a call from the Navy Department regarding these generators that we manufacture; they wanted some kind of a test or other, or something like that given to them, so he had to fly back to Washington. According to my informa-

tion he will be back in town Monday, or it may be Tuesday before he gets back, and he is certainly a material witness.

Trial Examiner Kent: If I adjourn over to Monday——

Mr. Schullman: That is not an adjournment.

Mr. Garrett: If your Honor please, Mr. Stevenson, representing the Teamsters, you recall, if your Honor please, he spoke at the time of the first motion for continuance about his obligation to finish a hot cargo case in Santa Ana. The attorney who would have taken my place in these proceedings had he been able to be here finished his work in the [1165] Union Ice case, also a hot cargo case, a case under a statute of this state relating to a secondary boycott, in which Mr. Stevenson also represented different unions, in the middle part of this week, whereupon they proceeded into the hearing—or in the early part of this week, whereupon they proceeded into the hearing of a hot cargo case in Santa Ana, which they expected to be concluded yesterday, but which ran through the entire day yesterday. I now learn that they are returning to Los Angeles. I have to have an opportunity to confer not only with my clients now but with Mr. Stevenson, who has not had an opportunity to be here, and I don't see how that work can possibly be accomplished except on Monday. So I respectfully urge therefore if we are to have a recess which is to mean anything to the unions to protect their interests, it should include Monday of next week. I think that with the notice we have now

and with the facts available, we can get ourselves into shape to go ahead with the hearing.

Mr. Schullman: I want to join in that, except I want to urge that you are not granting a continuance when you grant one until Monday, I mean, except for today. Saturday is necessarily not a working day and Sunday, of course, intervenes. I have several motions I wish to make which probably could be made now, but I want to confer with my clients, and I may say that Judge Padway, the AFL chief counsel, will be in town Monday, Tuesday and Wednesday. We have a [1166] conference with him on this matter, and I could at least see him Tuesday. Now, I think that if the thing goes over until Wednesday, we would be in a position in this case to make several motions. I would like to argue them when we do make them. We would like to be in a position of having a full consultation of all parties involved. In all due deference to the Trial Examiner, while we adjourn today, we are willing to go on today, but an adjournment over Saturday and Sunday is not an adjournment as such.

Trial Examiner Kent: Saturday, certainly is in our practice.

Mr. Schullman: I don't know whether you are considering Saturday. I don't think you have in this case.

Mr. Garrett: Certainly Monday would be a much more useful day for us, with Judge Padway here, than would today, if a choice had to be made.

Mr. Nicoson: I would not object to it going over until Tuesday.

Mr. Schullman: Off the record. Let me remark about it——

Trial Examiner Kent: No, let's stay on the record.

Mr. Schullman: Well, on the record, then, if we continue it to Monday, we may not—I mean, he has to consult with witnesses and Mr. Stevenson has not consulted with him, and the various painters all have to consult with Judge Padway. I think for the purpose of saving time here we would be in a position to know certainly what we are going to do on Wednesday. As I say, we all may have several motions after they terminate the case, and we may not. I don't know.

Trial Examiner Kent: Well, in view of the numerous issues, I do not consider that a short adjournment is probably a waste of time, because I think counsel on reconsidering the record may possibly shorten the length of time required to put in their case, but there is another angle in this particular case. We have been a little slow in getting started and lost considerable time. I have not been too hard-boiled, probably not hard-boiled enough, but I assume counsel have spent hours preparing for this matter, in addition to the three days we had at the beginning. I don't like to prolong the length of the hearing unduly, but in view of counsel's remarks and requests, I will adjourn until 9:30 on Tuesday morning. That will give you ample time, Mr. Schullman, to consider your motions, and you

may withhold offering them. It is a reasonable assumption that the balance of the case will take at least two days, so that will give you until Wednesday or Thursday.

Mr. Schullman: That is satisfactory. What I had in mind, I have not discussed the motions with counsel. It may be that they will persuade me not to make them. If we make them, it may be that it will shorten the whole case. I mean, we may make certain motions and we may not, we may not want to [1168] make any, but I want to consult all counsel before we move it that situation.

Mr. Tyre: I would like the record to show, Mr. Examiner, that I object to any continuance. You will recall that all A. F. of L counsel objected rather strenuously to proceeding with the hearing when it was first called, and the reason given was that they were going to require time to prepare their defense in this matter, and you continued the matter not for three days as your Honor stated, but for one week.

Trial Examiner Kent: Well, I was talking about three hearing days, Monday, Tuesday and Wednesday. On the other two days there was some question as to service, which I think precluded our starting the case until either Friday or Monday. That was what I meant by reference to three days.

Mr. Tyre: Yes, but there was a week's continuance from the actual date the hearing was set.

Trial Examiner Kent: That is true.

Mr. Tyre: For the sole purpose, as I understood it at least from the statement of counsel, to prepare their defense.

Trial Examiner Kent: Well, of course, that was part of the proposition, another part was to avoid any question as to service, and Mr. Schullman, I believe, made a motion that in effect was a request for further time to file an answer.

Mr. Tyre: Well, I wanted the record to show, your Honor, [1169] that in view of the continuance, I object to a continuance at this time.

Trial Examiner Kent: The record may so show.

Mr. Schullman: Even though the Trial Examiner has ruled, I want the record to show that originally a short continuance was granted, and that was requested by several counsel, and furthermore, that the Trial Examiner at the commencement of the case said upon the close of the government's case a continuance would be granted to meet whatever is raised at that time.

Trial Examiner Kent: Well, the record would show what I said. I don't remember that now. I probably indicated, I think, in a hearing of this kind where there are a number of issues a comparatively short continuance is a timesaver in the long run. We will adjourn then until 9:30 Tuesday morning.

(Whereupon, at 10:20 o'clock a.m., March 22, 1946, the hearing was adjourned to 9:30 o'clock a.m., Tuesday, March 26, 1946.) [1170]

Tuesday, March 26, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: On the record.

Apparently some of counsel are going to be delayed. It is now nearly a quarter of 10:00. I think we had better start moving.

Mr. Garrett and Mr. Schullman have previously, of course, indicated on the record that if they weren't here they had no objection to our proceeding.

Mr. Collins: I don't have my witnesses, Mr. Trial Examiner. I am expecting them. I told them to be down here at 10:00 o'clock. I assumed, from what Mr. Garrett and Mr. Schullman said, we would have some motions to make first.

Trial Examiner Kent: Yes. Mr. Schullman so intimated the other day. I guess we will have to take a recess until the witnesses appear.

(Short recess taken.)

Trial Examiner Kent: On the record.

Mr. Collins: Prior to opening the respondent's case, I would like to make two motions. First, I would like to make a motion to dismiss as to the Pioneer Electric Company. The Board has very ably presented a case, in my opinion, which has little or no merit. They have left no stone unturned. Mr. Nicoson has gone to the greatest lengths and used all of the diligence that his office requires, and in my opinion he has gone a little bit further than that even. [1174] He certainly ably presented a weak case.

The Pioneer Electric Company, according to the evidence that has now been adduced from his witnesses, started in business back in 1942, and leased a portion of the factory of the O'Keefe and Merritt Company, and has maintained that lease or a continuation of that lease or a new lease ever since.

This isn't the case of one concern taking over another. Both of them have been in business together all the time.

He has proved that the O'Keefe and Merritt Company and the Pioneer Electric Company keeps separate records. That the Pioneer Electric Company has made its own income tax returns. It makes its own social security returns and keeps its own workmen's compensation. In my opinion he has proven it is a separate legal entity.

He has proven, according to the evidence of the witnesses, that the manufacture of gas ranges by the Pioneer Electric Company was in contemplation of the parties long before any labor election or any labor difficulties were thought of.

He has proven that Pioneer Electric Company worked for other companies besides the O'Keefe and Merritt Company. He has proven that the employees of the Pioneer Electric Company did not have a vote in this election where now they are claimed to be represented by some union. He has likewise [1175] proven that the employees of the Service Incorporated, who are now employees of the O'Keefe and Merritt Company, did not have a right to vote in the election. He has proven that there are contracts and leases between O'Keefe and Merritt and Pioneer.

He has proven there are contracts between Pioneer Electric and the various AFL locals affected here.

Now, I respectfully submit, Mr. Trial Examiner, that the National Labor Relations Board, under the National Labor Relations Act, does not have jurisdiction to abrogate contracts entered into by these parties. There is no showing before this Board at this time that O'Keefe and Merritt and Pioneer are one and the same concerns. There is no showing that Pioneer Electric has ever had a right to have its employees have any election. Therefore, there is no jurisdiction on the part of this Board to do anything to Pioneer Electric Company, and upon those grounds I move that the action be dismissed as to Pioneer Electric, and in support of that I wish to file a written motion for dismissal.

Now, as to the O'Keefe and Merritt Company, I move for a dismissal upon the following grounds: The evidence clearly shows that Mr. Cecil Collins was the authorized agent of the O'Keefe and Merritt Company to bargain collectively with whoever won the election, the CIO. Now, whether or not that was an honest election I am going to pass at this time, [1176] but I would like to say in passing that the man who was supposed to be watching out for the American Federation of Labor was a traitor in disguise. He was their man looking at the polls, certifying the right of each individual to vote, and all of the time he was seeking and working for the CIO. If there ever was a greater double cross in the history of labor relations, I would like to know

what it was. He has double crossed every one of those 85 people which he talked into joining the American Federation of Labor.

That is the kind of man whose testimony is to be believed here if we are going to proceed at all. I submit to your Honor that his testimony is not worth one cent. It is nothing but a figment of the imagination, he has imagined this, he suspected that, he thinks this, and he was even a difficult witness for Mr. Nicoson to get the truth out of. He didn't want to tell the truth. He wanted to tell a story that would help him win a case. The real rub of that man was that he lost his job as president of the Five and Over Club and he wanted to do something to punish his fellow employees.

But I am selected then as the bargaining agent to talk for the company, and the question is have I bargained for them in good faith. The evidence of the Board shows that the first meeting was held sometime, as I recall, in the latter part of December. That was the first meeting that they [1177] asked for. That was approximately 30 days after they won the election, whether it was honest or otherwise they won it. So I sat down and I bargained with them. The evidence will show I had three or four miscellaneous employees of the O'Keefe and Merritt Company, and I am the bargaining agent and I say we will agree to this and we won't agree to that and so forth.

Now, then, if it is the contention of the Board that I had to sign exactly what the CIO presented to me, I might as well quit right now. That would

have been an order, that would have been dictatorship, that would not have been bargaining, and I have a right to say we will give this and we won't give that. The substantial evidence shows that the only disagreement was on the union security clause. I said we would give maintenance of membership and he said he wanted a union shop. That was the substantial clause. There were other things that were not agreed upon, but they were not deciding. They could have been agreed upon if that clause had been agreed upon.

The second meeting was held within approximately a week thereafter and we went over approximately the same things, and something as I recall about the American Legion wanting to take care of their own affairs instead of having the CIO Union do it for them.

The third meeting was in my office, and that was approximately [1178] a week after that. I think that was on the 3rd of January. The fourth meeting was on the 8th of January. Everyone of those meetings we talked about this clause, we talked about that clause, this was agreed on and that was not agreed to, but in any event we were bargaining.

The fourth meeting was on the 8th of January. We were bargaining along the same line. The fifth meeting was on the 25th of January. At that I did not bring my committee in, because Mr. Despol testified that he told them not to come in. In other words, whether he will admit it or not, he intimidated those employees to the extent that they were afraid to come in to the meeting. What happened

then is just between Despol and myself. He said certain things, and I think that the testimony will clearly indicate that regardless of what he said, it shows that we were still bargaining and we could not agree on the union security clause. That was the rock upon which the wave broke. If we could have agreed on that, we could have agreed to a contract.

Now, I submit that the National Labor Relations Act does not compel me to sign a union shop contract, a closed shop contract, or anything else. It merely says that I have to bargain in good faith, and I believe that the evidence clearly shows that I have, up to that fifth meeting, even.

Now, then, there is evidence that there were two telephone calls, in one of which I was asked if I still were [1179] bargaining for the O'Keefe and Merritt Company, and I believe he admitted I said I was. However, I said at that time in response to his question, "Will you give me the same agreement that you gave for the Pioneer to the A. F. of L.?" I said that I would have to think that one over.

That brings us down to about the latter part of January. Now, then, here upon the 15th day of February, or prior thereto, I think it was just before that happened, about the 12th of February, we had this unfair labor charge filed against the O'Keefe and Merritt Company.

Now, is it the union now that is breaking off the negotiations or has the employer refused to bargain? I submit that the evidence clearly shows

right here, even in this court, that Mr. O'Keefe said he would agree to this, he would agree to that, he would agree to this, he would agree to that. He even said he would agree to any kind of a contract I O.K.'d for him.

Are we still bargaining? I have offered in open court to stipulate that I would sign a contract as to those matters that were agreeable to both parties. That is more than the law requires me to do. All I have to do is bargain. I am now telling these people, "Sure, I will sign that much of a contract. Reduce it to writing." All they would have to do is accept my stipulation in court and they would have the contract. [1180]

I therefore contend that as to the O'Keefe and Merritt Company, the issue is now mute; there is nothing to try. The only possible thing that can be left to try would be some of these alleged unfair activities. If they enter into a written contract, those things are cured.

We are now taking up the time of all these people here today and spending the taxpayers' money to decide something that is no longer at issue. It has been decided by us outside of court. And upon that ground I respectfully submit the action against the O'Keefe and Merritt Company should be dismissed.

Mr. Nicoson: If your Honor please, obviously I oppose any such motion. I do not agree that the evidence in this case makes out anything like what Mr. Collins has just represented to you.

First let's take the latter motion because I think, in my opinion, you can't really separate one from

the other. He would have you believe, and he would have you believe that the record shows that he bargained in good faith with the C.I.O. Union after the election.

It seems to me to be a little obtuse to come in at one time and say, "We are bargaining with you in good faith," at a time when you have already contracted with another outfit to take over the unit in which you are alleged to be bargaining in good faith. You just can't do those things [1181] consistently with good faith. You can't get your business out from under the effects of that bargaining and still be dealing across the table at arm's length in good faith.

Now, the evidence shows here that on the 2nd of January, 2nd of January, mind you, in 1946, the O'Keefe and Merritt Company and the Pioneer Company entered into their second lease agreement whereby it was arranged that Pioneer would take over from O'Keefe and Merritt the manufacturing of stoves and gas appliances and the other things that O'Keefe and Merritt had, with the exception of the war years, and had been carrying on for a period of almost 30 years.

On the very next day after that contract was entered into they had a meeting with the C.I.O., with Mr. Despol, at which uninvited and inconsistent with bargaining in good faith, I submit, the company brought in a committee allegedly of A.F.L. people.

Now, they didn't tell Mr. Despol at that time that "We have sold this business out. We no longer have

a business. We can't bargain with you in good faith because we don't have a business to bargain with you about. The unit for which you have been certified is no longer in existence because we have sold out our business."

No, they didn't make any such statement. They went through all the machinery of going over, over, over, over, over, over. That not only took place, it took place many [1182] times, and the bargaining power for the O'Keefe and Merritt well knew at that very time and at all times thereafter, when he was allegedly going through these motions of bargaining, they had sold the business out from under the bargaining unit and the bargaining representative.

I submit, Your Honor, that no court in the land would hold that is bargaining in good faith. Not only that, we have the further issue of the little matter in the bar, which Mr. Collins has not even touched on. I submit that those do not reflect upon anybody bargaining in good faith. Any time you offer the other party money or suggest to them they take money to withdraw from the bargaining picture, you certainly aren't doing it in good faith. At least, in the National Labor Relations Act and the courts sustaining the orders of our Board have not thought of it as good faith.

Now, with respect to Pioneer and the motion to dismiss as to that. I think equally that is without merit. Mr. O'Keefe, the president of O'Keefe and Merritt, got on the stand and told a very convincing story. I think Mr. O'Keefe was telling the

truth. I think he told the truth when he said that the certification of the C.I.O. was part of the reason why the company decided to transfer their business over to the Pioneer Electric Company. I think Mr. O'Keefe told the truth about that. At least, he has not been impeached yet, and at this stage I think you are required to [1183] believe that he did tell the truth.

If that was the reason or if that was one of the reasons that they transferred over the Pioneer, then I insist that under the decisions of the National Labor Relations Board and the Circuit Courts of Appeal that Pioneer is equally responsible and also responsive to this certification which the Board has issued at this time and on which these proceedings are resting.

There is no question in my mind of the fact that if this were a case before the jury that there is sufficient evidence before your Honor at the present time that you couldn't take it away from the jury, you would have to send it to the jury for decision. Such is the situation which rests before your Honor at the present time. Such being the evidence, I think your Honor is in no position to grant either of the motions at this time.

Trial Examiner Kent: Both motions will be denied without prejudice to later renewal.

I think there has been a *prima facie* case presented that should be met. I possibly unduly stressed the alter ego theory during the hearing, and I don't want counsel to be misled by anything I may have said there.

The Board has recently decided, a late decision, in Simmons Engineering Company. I believe it was decided on February 26, 1946. It is reported in 17 Labor Relations [1184] Reporter, 932. It seems to have considerable bearing on this case.

Mr. Collins: What is the name of the citation?

Trial Examiner Kent: 17 Labor Relations Reporter, 932; Simmons Engineering Company.

I haven't had an opportunity to consider the entire Board's decision. In general the Labor Relations Reporter Digest sets out the elements of the decision in proper fashion, and it is reliable; we use it a great deal.

But in this case the alter ego theory was not stressed and apparently the case holds that:

“The certification for exclusive representative of employees raises the presumption of its continuing the majority status, which is valid against the employer, a bona fide transferee of the plant involved, subsequent to the certification.

“The transferor in this case, a partnership, did not retain any interest in transferee, a corporation, because the shareholders of the transferee corporation had no prior interest in the transferor.”

Now, at first glance that seems to be bad medicine for the respondent. I merely cite it at this time because I don't want to be later accused of unintentionally playing up the alter ego theory too strongly, and possibly misleading the respondent.

I might say that I checked that, because I thought I saw an expression on Mr. Nicoson's face which reminded me of that old story of the cat that had just drunk a pint of cream. I thought he had that in mind and was ready to lay it in my lap at the end of the hearing, so I then proceeded to do a little checking, and I found this case.

We might proceed.

Mr. Collins: Mr. Fred Rotter, please.

FRED ROTTER,

a witness called by and on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Collins:

Q. Mr. Rotter, I believe you have been sworn before; have you not? A. Yes.

Mr. Nicoson: But they do it again, though.

Q. (By Mr. Collins): You have testified in this case, called by the Board's attorney? A. I did.

Q. Now, calling you attention to some time the latter part of December, 1945, in my office, did you attend any meetings at which Mr. John Despol of the C.I.O. was there? A. I did.

Q. Would you state who was present? [1186]

A. John Despol, yourself, myself and Johnnie Levascos, Joseph Sanchez, Frank Doyle. I don't specifically recall the fourth party. There was a fourth party there I don't recall.

(Testimony of Fred Rotter.)

Q. Will you relate, as best you can, the conversation that occurred in that office, using as far as possible, "I said this" and "he said that" and "Collins said that"? Don't draw a conclusion. Don't say, "It seemed like," and so on. Use the expression "I heard" and "he said," to the best of your recollection.

A. Attempts were made to enter into a contract by Mr. Despol and Mr. Collins——

Mr. Nicoson: Object to that as stating a conclusion of the witness.

Q. (By Mr. Collins): Mr. Rotter, these attorneys on the other side of the table are going to object every time you say "attempts were made" or conclusions were drawn, and so on. You don't have to use the exact language, which I realize would be difficult. You have to try to start your sentences out with "I said this" or "Collins said that" or "Despol said that," and so on. Relate the conversations, not the conclusions you draw from it.

A. Mr. Collins questioned Mr. Despol in regard to the type of contract he had to offer. Mr. Despol produced a copy and after some mention was made of the various clauses in it, Mr. [1187] Collins mentioned the fact "That this may all be in vain."

He mentioned the fact, "There may not be a contract necessary."

Q. What did he say? What did Collins say? Did he say why it would be all in vain and no contract would be necessary?

A. That is right. He stated, Collins mentioned——

(Testimony of Fred Rotter.)

Q. Why did he say that? Did I say why it might be all in vain?

A. That there would not be an O'Keefe and Merritt Company.

Q. Did I mention any other company?

A. They were contemplating switching over or organizing a new firm under the name of Pioneer Electric Company.

Q. Was this a new firm or one that was in existence?

Mr. Nicoson: Just a minute. I am going to object to prompting the witness.

Mr. Collins: Just a moment. I withdraw the question.

Q. (By Mr. Collins): Was the Pioneer Electric Company operating in the O'Keefe and Merritt factory at that time? A. Yes.

Q. Did the Pioneer Electric Company have employees in the O'Keefe and Merritt factory at that time? A. Yes.

Q. You saw people working around there with Pioneer Electric buttons on, I suppose?

A. Yes. [1188]

Q. Now, when I told Mr. Despol that the O'Keefe and Merritt would very likely be taken over by the Pioneer Electric Company, what did he say?

A. He mentioned something to the effect that you were probably kidding him.

Q. Just relate the conversation as best you can.

A. He asked if—Despol asked if, addressing

(Testimony of Fred Rotter.)

himself to Collins, asked if he were not kidding him to evade an issue. Collins told him no, that negotiations were under way to continue on the aforementioned plan.

Q. What else did he say, if anything?

A. That he would continue on the—under the present conditions and contemplate affecting the O'Keefe and Merritt Company with a United Steelworkers contract.

Q. Did he say what he would do in the event that they changed the operation?

A. That would be the trouble of continuing on under the same set-up.

Q. Did he threaten to do anything to the O'Keefe and Merritt Company if they made the transfer?

Mr. Nicoson: Object to that as calling for a conclusion of the witness and also leading.

Q. (By Mr. Collins): Well, what did he say in addition? I will withdraw the question.

Mr. Nicoson: That is one of those questions that can't [1189] be cured either.

The Witness: Despol also mentioned in the course of the conversation that regardless of the contemplated change of the O'Keefe and Merritt Company, that the C.I.O. has been doing considerable organization work and felt that they should be the bargaining agent for the Pioneer as well as the O'Keefe and Merritt Company.

Q. (By Mr. Collins): What else did he say?

A. In mentioning the organization work, that

(Testimony of Fred Rotter.)

there was considerable expense involved in the organization work.

Q. What else was said? Did I say anything or did he say something or somebody else speak up? What happened after that?

A. You did mention something to the effect that the company, or the clients, my client would be willing to make some sort of adjustment regarding the organization expense. Mr. Despol did not accept or reject, just merely smiled.

Q. Yes. What other conversation took place? Is that all? Was there more conversation? What happened after that?

A. Mr. Despol continued to present the various terms of the contract.

Mr. Tyre: Objection, because that is a conclusion of the witness, and I ask that the answer be stricken.

Trial Examiner Kent: I think you might simplify your answer a little bit, and tell us the various things he did, [1190] and what he said in reference to that.

The Witness: Mr. Despol ignored the previous conversation regarding the expense and proceeded to continue arguing about the merits and the various clauses in the contract, which was temporarily argued back and forth between Mr. Collins and Mr. Despol, and in time the subject was again mentioned by Mr. Collins that there was really no necessity to continue on on contemplating this contract.

(Testimony of Fred Rotter.)

Q. (By Mr. Collins): What did Mr. Despol say to that?

A. He mentioned after a lapse of some time that he would make—mentioned something about making an additional appointment for some later date. Time was then elapsing and becoming very late in the afternoon.

Q. Was there anything—

Mr. Garrett: May I have the last reply read, please?

(Answer read.)

Mr. Garrett: Thank you.

Q. (By Mr. Collins): Did we have any discussion of money matters while he was there or you were there?

A. None other than the mention of Mr. Despol of the expense of organization work.

Q. And did he state whether he was willing to discuss money matters in front of the committee?

A. That I don't recall.

Q. Did you hear me state anything to the effect about [1191] taking up this organization expense with my clients?

A. That I testified that you did.

Q. Did I say I would take that up or did I say that my clients would take it up or that I would discuss it with my clients?

A. That you would discuss it with your clients.

Q. Now, then, I will show you Board's Exhibit 26, which has been introduced in evidence in this

(Testimony of Fred Rotter.)

case as a copy of the contract that the C.I.O. presented to the O'Keefe and Merritt Company, and I will ask you if you have ever seen this one or one similar to it. What I want to know is, is that substantially the same contract that Mr. Despol presented that evening or on other occasions?

A. The question again, please.

Q. Is this substantially the same contract that the C.I.O. presented to us in their bargaining negotiations?

A. The C.I.O. presented?

Q. Yes.

A. Mr. Despol presented?

Q. Yes. A. No.

Q. You do not recognize this contract?

A. Not as Mr. Despol having presented it.

Q. Do you recall my discussing with him the question of whether we would grant them maintenance of membership or a [1192] union shop? Do you know what the terms mean?

A. Yes.

Q. Do you recall any conversation about maintenance of membership or closed shops?

A. There was nothing mentioned about closed shop. Maintenance of membership was mentioned, regarding O'Keefe and Merritt, the remaining O'Keefe and Merritt employees.

Q. Do you recall whether or not I said to him whether or not we would agree to a maintenance of membership clause in the union contract with him?

A. That you did mention.

Q. Did I state I would agree or I would not agree to it?

(Testimony of Fred Rotter.)

Mr. Tyre: I am going to object, your Honor. These are all leading questions. This is Mr. Collins' witness. I suggest that Mr. Collins ask questions as though this were his own witness, and not put answers in the witness' mouth. I object to any further leading questions.

Mr. Collins: I submit, Mr. Trial Examiner, I inquired did I or did I not say this or say that. I don't think that is leading and suggestive.

Trial Examiner Kent: You what?

Mr. Collins: I asked him did I offer to give him maintenance of membership or did I not offer to give him maintenance of membership. I don't see anything leading about that. If it would suggest anything, it would suggest the [1193] negative as well as the positive.

Trial Examiner Kent: He may answer the question.

Mr. Tyre: I ask that this witness be asked questions as to what was said at the meeting and let the witness state what was said at the meeting instead of allowing Mr. Collins to have this witness state in Mr. Collins' language what was stated at this meeting. I think that is the proper way to question.

Mr. Collins: Mr. Trial Examiner——

Trial Examiner Kent: I think there is merit in counsel's objection. It might be better to follow the usual procedure and let the witness state.

Mr. Collins: I am thoroughly familiar with the rules of evidence, and I believe they should be followed explicitly. However, I am also familiar with

(Testimony of Fred Rotter.)

one of the rules of this Board, that there are no rules of evidence or procedure as followed in the State of California. However, even following those rules, I now submit that I now have the right to refresh this witness' memory. He has testified he does not even remember the contract as being the exact one.

Mr. Nicoson: Your statement whether or not you agreed certainly is not a proper one.

Mr. Collins: I didn't use the word agree.

Mr. Nicoson: Yes, you did use the word agree.

Mr. Collins: Very well. Then I will reframe the [1194] question.

Trial Examiner Kent: You may reframe the question.

Q. (By Mr. Collins): Was there anything said about maintenance of membership by myself?

A. Definitely.

Q. What did I say?

A. That maintenance of membership would be retained as far as the O'Keefe and Merritt employees were concerned.

Q. What do you mean by that answer?

A. That previous to the discussion of maintenance of membership it had been mentioned that the O'Keefe and Merritt Company would be dissolved or the work transferred to the Pioneer Electric Company, inferring at the time that there would not be a sufficient number of O'Keefe and Merritt employees remaining to other than guarantee maintenance of membership.

(Testimony of Fred Rotter.)

Q. Was there any mention of strikes and lock-outs? A. There was.

Q. What did I say about that?

A. Mr. Collins asked Mr. Despol whether any clause or assurance could be made to avoid any strikes or lockouts or any disturbances affecting production. Mr. Despol mentioned that the usual clauses would be inserted.

Q. Now, in this negotiation with Mr. Despol, did I state to him at any time whether or not we could accept his entire contract [1195] as handed to us?

The Witness: Read that question, please.

(Question read.)

A. You definitely stated more than once during the course of the evening or the meeting that the contract in its entirety could not be accepted under any circumstances.

Q. Did I or did I not state that certain parts of it were agreeable?

A. Numerous parts were definitely stated, numerous parts were agreeable.

Q. Now, then, Mr. Rotter, at the time of the election, to wit, on the 20th of November, 1945, did the O'Keefe and Merritt Company have any stove mounters, actually working as stove mounters?

A. No.

Trial Examiner Kent: What was that date?

Mr. Collins: November 20th, 1945.

Q. (By Mr. Collins): Does the Pioneer Electric Company at this time have stove mounters?

A. Yes.

(Testimony of Fred Rotter.)

Q. Did the employees of Service Incorporated appear upon the list of employees eligible to vote on November 20th? A. Yes.

Q. The employees of Service, Incorporated?

A. Yes. [1196]

Mr. Nicoson: Who are they?

Mr. Collins: Let me have that list.

Q. (By Mr. Collins): Will you state for the record who the Service Incorporated is or what it was at that time?

A. Service Incorporated was a separate firm consisting of approximately six or seven or possibly eight employees, and at the time they were handling our shipping. There was a question about the—rule out the question then. They appeared on the list, so, Mr. Collins, if there is any question on that.

Q. I will show you Board's Exhibit 12 and ask you if you see on there any of the people who were working for Service, Incorporated at that time. Well, were they permitted to vote?

A. They were on the list here. The letter is self explanatory on those.

Q. I will ask you about Len C. Leonard, did he vote?

A. I have no way of determining whether he voted or not.

Q. Did Frank Scavo vote?

Mr. Collins: I wish to point out for the record that the record at this point shows that four of them appeared to vote and their ballot was chal-

(Testimony of Fred Rotter.)

lenged, so far as you know actually it comes down to you don't know whether they voted or not. They were on this list.

A. I know they were challenged at the time, and there was a question brought up at that time about the tally between [1197] the C.I.O. and the A. F. of L., whether or not they should be included. I think it was determined between them that they would not be counted.

Mr. Collins: I see.

Mr. Tyre: I move that be stricken, if the court please, as stating a conclusion of the witness, what he thought later happened, not responsive to the question I think it is rather important, your Honor, that that matter be stricken at this time.

Trial Examiner Kent: I think it might be brought out in a little more detail.

Mr. Tyre: May I have the motion ruled upon?

Trial Examiner Kent: Yes, I will sustain the objection. The answer may be stricken.

Mr. Collins: Is counsel willing to stipulate that those votes were disqualified at the end of the election, those belonging to Service Incorporated who appeared to vote?

Mr. Nicoson: I think I am able to stipulate it indicates generally, wherever the letters ch. appear behind the name, that is our method of showing that that particular vote was challenged. As to whether all of them were challenged or not, or whether all of them even presented themselves, I could not go

(Testimony of Fred Rotter.)

that far, but I can stipulate that wherever the ch. appeared behind those names, for example, Frank Scavo, Clyde Sweeton, Jimmie M. Vick, and Ray H. Steen, each have the letters ch. behind them, and I will stipulate that they were challenged.

Mr. Collins: I will accept that stipulation.

Mr. Garrett: What do you mean by that, Mr. Nicoson? You mean that where the ch. appears on Board's Exhibit 12-B it indicates that a challenge was received by the Board's observer at the election, and that he indicated it on the payroll list by thereon writing the word ch. after the name of the person on the payroll list? [1199]

Mr. Nicoson: Without binding myself to the exact [copy illegible] I can say generally that is the thing that indicates to me, someone raised some question, I suppose, about the eligibility of those particular people. The general practice is that where anyone raises a question as to the eligibility we permit them to vote a challenged ballot. We do that by showing on the payroll or the check list that they have been challenged, and we give them a ballot, a secret ballot envelope, they go in the booth and mark the ballot, seal it in the small envelope marked secret ballot, and then we put it in a larger envelope and on the outside is put the name of the individual. I know of no reason why there was any departure from that practice here.

Mr. Collins: Mr. Rotter——

Mr. Garrett: Just a moment. There are eight

(Testimony of Fred Rotter.)

names appearing on Board's Exhibit 12-B in the section indicated to be the payroll of the Service Incorporated employees, four of them having a red mark after them and the pencil notation ch. Would that indicate that the other four did not appear to vote or can you tell by looking at that?

Mr. Nicoson: I think the indication is that those names——

Mr. Collins: I think I can clear this up.

Mr. Nicoson: ——behind which there is no mark is an indication that they did not present themselves for voting.

Mr. Garrett: Have you any way of ascertaining whether [1200] the four challenged ballots were actually counted or not?

Mr. Nicoson: Those four challenged ballots were not counted.

Mr. Garrett: How did that appear?

Mr. Nicoson: Wherever the challenges do not affect the outcome of the election, we do not count them. Wherever it is possible that the challenged ballots may effect the outcome of the election, they are opened and counted.

Mr. Collins: Then I take it that the four red names were challenged and their votes were not counted, on this general practice, is that right?

Trial Examiner Kent: I think for the purpose of clarity it might also appear that the eight names counsel have been talking about are the last eight names appearing on Board's Exhibit No. 12. I

(Testimony of Fred Rotter.)

don't believe the record shows that. It may help to——

Mr. Nicoson: Yes, and for further identification, right above these eight names about which we are now talking has been written in pencil the words "On payroll of Service, Inc." I am willing to stipulate that those words were written on there by Mrs. Phoenix of the Board, and that is written immediately above those eight names.

Mr. Collins: I will accept that stipulation.

Trial Examiner Kent: The record may so show.

Q. (By Mr. Collins): Mr. Rotter, were any of those employees [1201] of Service Incorporated taken care of on the payroll of the O'Keefe and Merritt Company upon November 20th?

A. Taken care of on the O'Keefe and Merritt Company payroll?

Q. I will reframe the question. Were they on the O'Keefe and Merritt Company's payroll or on the Service Incorporated payroll?

A. On the Service Incorporated payroll.

Q. In other words, as head of the personnel department, you had nothing to do with keeping their hours or employing them in any way?

A. None whatever.

Q. You do not actually know whether they were ever employees of the Pioneer or not?

A. No, I do not.

Q. Do you know how they happened to get on that list? A. Yes, I do know that.

Q. How did they get on there?

(Testimony of Fred Rotter.)

A. I had them put on there questioning Mrs. Phoenix as to their eligibility of voting.

Q. I see. Very well.

Mr. Garrett: Can I have that last answer read?

(The answer was read.)

Mr. Garrett: What does that mean?

Mr. Collins: Well, let me ask him the next question. [1202]

Q. (By Mr. Collins): Are they working for O'Keefe and Merritt now, those people?

A. They are.

Q. So why did you want Mrs. Phoenix to let them vote?

A. Because I knew they were coming back to the O'Keefe and Merritt Company payroll and I wanted to determine whether their eligibility to determine their—they were eligible to determine their bargaining unit, their representative.

Q. Do I understand your testimony that those employees are now working for O'Keefe and Merritt?

A. They do.

Q. And that is part of the group that the Steelworkers are attempting to bargain for, is that true?

A. That is right.

Q. How long has it been since O'Keefe and Merritt Company has had any stove mounters working for it?

A. Since the middle of 1942.

Q. Don't they have any stove mounters working for them now?

A. No.

Q. Now, Mr. Rotter, did any representative of

(Testimony of Fred Rotter.)

the CIO or the Steelworkers ever appear and ask you for the right to bargain for the employees of Pioneer Electric Company? A. No.

Q. Did they ask anybody else connected with Pioneer, so [1203] far as you know, for that right?

A. They did not, so far as I know.

Q. Did the AFL ever ask you for anybody else, so far as you know, for the right to bargain for these employees? A. Yes.

Q. Now then, I believe you testified a moment ago as to the first meeting with Mr. Collins and Mr. Despol in Mr. Collins' office. Did you attend any further meetings?

A. I attended a subsequent meeting of possibly two to three weeks later.

Q. What happened at that meeting?

A. The same mention was made there at the time——

Mr. Tyre: Just a minute. May we have a better foundation laid for this meeting, who was there and when it was or where it was?

Mr. Collins: So the record will be clear about this, I am referring to the five meetings Mr. Despol testified to. That is all I am going to talk about at any time; one of the five meetings.

Q. (By Mr. Collins): Can you more closely ascertain the date of this second meeting you are now testifying you attended, Mr. Rotter?

A. The specific date, no. Sometime in the middle of January.

(Testimony of Fred Rotter.)

Q. Sometime the middle of January. Who was present at [1204] that meeting, so far as you can recall?

A. Mr. Collins, Despol, myself, Daley, Cunningham. There were two others; I don't recall the names.

Q. Well, relate the conversation or what transpired in that meeting, to the best of your recollection.

Mr. Tyre: Was this in Mr. Collins' office?

The Witness: In Mr. Collins' office, yes. The negotiations were again entered into on a general basis by Mr. Collins and Mr. Despol, with the four witnesses listening. The general terms of the contract were again discussed, gone over the second time, to determine which could be used or which could not be used.

Maintenance of membership was again brought up, mentioned by Mr. Collins that maintenance could be inserted. Sick leave clauses were extreme. Minor other paragraphs were discussed; some favorable toward the O'Keefe and Merritt Company and some favorable toward the United Steelworkers.

After he come to the point of discussing about rates, Mr. Despol mentioned there would be no discussion of rates mentioned among the witnesses. Again Mr. Collins informed Mr. Despol that he saw no sense in continuing these meetings due to the fact that there would not be sufficient number of employees to represent.

(Testimony of Fred Rotter.)

Mr. Despol mentioned, "Why do you say that?"

Mr. Collins answered, "The fact that there will be very [1205] few O'Keefe and Merritt employees remaining to make it worth your while."

Mr. Despol questioned Mr. Collins again in regard to what he meant by that.

Mr. Collins informed him that another company, contemplated transferring all production work into another firm. It was mentioned if another vote was to be authorized by the NLRB it would very likely sway the issue.

Again Mr. Despol mentioned the fact that that would have no bearing on the case, they were authorized representatives and having gone to the trouble and expense of doing this organizational work they would continue.

Mr. Collins informed him that he didn't see how he could have any right to continue, especially since the majority of the employees are favoring the AFL.

After further discussion there, Mr. Collins again mentioned to him, "Why mention the expense in the organization? As I mentioned before, I am willing to discuss the matter with my client and see if we can't reimburse you for what expense you have been involved in."

Mr. Despol again sort of smiled at the idea and did not commit himself one way or another. After further discussion of minor clauses in the contract, the meeting was adjourned.

(Testimony of Fred Rotter.)

Q. (By Mr. Collins): Did you ever take any part in the [1206] activity on behalf of either the CIO or the AFL in the O'Keefe and Merritt factory.

Mr. Nicoson: May I have that question read?

(The question was read.)

The Witness: Only once.

Q. (By Mr. Collins): What was that?

A. Two or three or four of the employees were interested in some membership cards. I had both union membership cards available. These boys mentioned about wanting a couple or three AFL membership cards.

Q. Did you have CIO cards there, too?

A. I did.

Q. Did anybody ask for CIO cards?

A. They did not.

Q. Did you ever tell anyone that they would be disciplined in any way if they refused to join either organization?

A. I did not.

Q. What did you tell them the company's attitude was or your attitude was about either one of these unions?

Mr. Nicoson: Objected to as assuming a fact not in evidence.

Mr. Collins: This is direct examination.

Q. (By Mr. Collins): Did you ever tell them anything about your opinions or the company's opinions regarding either union? [1207]

A. I did not.

(Testimony of Fred Rotter.)

Q. Do you know of any occasion when anyone was disciplined or otherwise lost any advantages by reason of joining either union? A. No.

Q. If there had been such a thing, would you know about it? A. Yes.

Q. Did you ever hear Mr. O'Keefe make a speech out there in the factory? A. Yes.

Q. Do you recall anything that was said in the speech?

Mr. Nicoson: Are we trying to impeach the witness?

Mr. Collins: No.

Mr. Nicoson: Then I object on the ground——

Mr. Collins: I withdraw the question.

Q. (By Mr. Collins): Did you receive any instructions from O'Keefe or from myself regarding the attitude you were to take concerning membership in either union? A. None whatever.

Mr. Collins: You may cross-examine.

Mr. Garrett: May we have the morning recess?

Trial Examiner Kent: Just a minute. I might offer as Respondent's exhibit next in order the two written motions that were handed to me at the opening of the hearing. I will also give you two copies for your files, Mr. Nicoson. [1208]

(The documents referred to were marked as Respondent's Exhibits Nos. 9 and 10, and were received in evidence.)

(Testimony of Fred Rotter.)

RESPONDENT'S EXHIBIT No. 9

United States of America
Before The National Labor Relations Board
Twenty-first Region
Case No. 21-C-2689

In the Matter of
O'KEEFE AND MERRITT MANUFACTURING
COMPANY, et al, etc.
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., et
al, etc.

MOTION TO DISMISS

Comes now the Pioneer Electric Company, respondent in the above titled action, and requests that the complaint of the United Steelworkers of America be dismissed upon the following grounds:

1. Respondent, Pioneer Electric Company, was first organized in 1942, as a partnership. That it leased a portion of the factory of O'Keefe & Merritt Co., a corporation, and has either maintained that lease or other leases in full force and effect from it until now.

2. That it has operated as a partnership in the same building with the O'Keefe & Merritt Co. from its inception and that the O'Keefe & Merritt Co. has maintained its own identity as a corporation from then until now. This is not a case of where one company sells out to another. Both are still in business.

(Testimony of Fred Rotter.)

3. That at the time of the election on November 20, 1945, both O'Keefe & Merritt Co. and Pioneer Electric Company had employees and were operating as separate legal entities. That at the present time they are both still operating as separate legal entities, both having employees. That the Pioneer Electric Company maintained its own records for all its employees, makes its own Social Security deductions and employer contributions, has its own Workmen's Compensation insurance policies, pays its own Federal Income Tax and State Income Tax, maintains its own office force entirely separate and apart from its landlord and prime contractor, O'Keefe & Merritt Co.

4. Does and did work for other companies besides the O'Keefe & Merritt Co. Does have and did have other types of work in addition to that given to it by O'Keefe & Merritt Co.

5. Is, in every way, a separate legal entity.

6. That the employees of the Pioneer Electric Company did not have an opportunity to vote at the election referred to in these proceedings; that the employees of the Service, Inc., likewise, did not have an opportunity to vote in the election referred to in these proceedings, although a claim is now being made by the United Steelworkers of America to bargain for both of these groups of workers.

7. That the Pioneer Electric Company has a contract with the various A. F. of L. Locals and a contract with the O'Keefe & Merritt Co. That it is a separate legal entity. That the National Labor

(Testimony of Fred Rotter.)

Relations Board, under the National Labor Relations Act, has no jurisdiction to abrogate contracts heretofore entered into by the Pioneer Electric Co.

Wherefore, Pioneer Electric Company moves that this proceeding be dismissed so far as it is concerned.

Respectfully submitted,

/s/ CECIL W. COLLINS

Attorney for Pioneer Electric
Company.

[Endorsed]: Filed March 26, 1946.

RESPONDENT'S EXHIBIT No. 10

United States of America

Before The National Labor Relations Board

Twenty-first Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING
COMPANY, et al, etc.

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., et
al, etc.

MOTION TO DISMISS

Comes now the O'Keefe and Merritt Manufacturing Company, respondent in the above titled action, and moves the National Labor Relations Board to dismiss the complaint of the United Steelworkers of America on the following grounds:

(Testimony of Fred Rotter.)

1. The evidence clearly shows that Mr. Cecil W. Collins was the authorized agent of the O'Keefe and Merritt Manufacturing Company for the purpose of bargaining with and entering into a contract with the United Steelworkers of America.

2. That Mr. Collins did bargain with the United Steelworkers of America on seven different occasions, ranging over a period of approximately forty-five days, wherein the only substantial difference between the parties was on the question of Union security, the employer offering maintenance of membership and the Union asking for a union shop.

3. That the employer likewise offered to pay 20% higher than the going rate in the stove industry in this area and not to take away any advantages that its employees enjoyed prior to the signing of a contemplated contract.

4. That, thereafter there were at least two telephone calls wherein additional requests for bargaining were made and the employer agreed to continue bargaining. That the employer is still bargaining and will bargain.

5. That the first demand made by the employer to do any bargaining was some time along the latter part of December. That the employer did bargain with the union all through the month of January and during the month of February. These charges were filed by the union. It is the union that has refused to bargain, not the employer.

6. That the employer, in addition to bargaining in good faith, has made an offer in Court to not

(Testimony of Fred Rotter.)

only bargain but to actually sign a contract embodying those clauses which are agreeable to both parties. (See record.) All but two or three clauses are agreed upon. (See record of John Despol on cross-examination.) This is more than an employer is legally bound to do. The Act merely provides that the employer must bargain in good faith. We have now proven our good faith by offering to sign such a contract.

7. That the manufacture of gas ranges by the Pioneer Electric Company was in the contemplation of the parties long before any labor difficulties or election.

Wherefore, respondent moves that the action be dismissed as moot.

Respectfully submitted,

/s/ CECIL W. COLLINS

Attorney for O'Keefe and
Merritt Manufacturing
Company.

[Endorsed]: Filed March 26, 1946.

Mr. Nicoson: Are we going to take a recess or do you want to go ahead?

Trial Examiner Kent: We might take a recess for five minutes, yes.

(A short recess was taken.)

Trial Examiner Kent: On the record.

Mr. Collins: I have one more question, Mr. Trial Examiner. I see I inadvertently pointed out the

(Testimony of Fred Rotter.)

American Federation of Labor contract, being Exhibit No. 26, to which this witness replied he had not seen that contract, presented by Mr. Despol.

Q. (By Mr. Collins): Now, Mr. Rotter, I will show you Board's Exhibit No. 10, being the Steelworkers' contract, CIO. Have you ever seen that contract? A. Yes.

Q. Now, this is the contract that you are referring to that you were negotiating about in my office on the two meetings you attended?

A. That is right.

Q. Now then, if you will look through that contract and state which clauses were agreed to by myself and the company and which were not, if you can remember them. [1209]

A. Section 1, A and B. C was not wholly agreed to.

Q. What was said in connection with C? What else did we want on there, if you can recall?

A. I recall that statement regarding C. It was accepted.

Q. It was accepted. Very well. Proceed. Union Security.

A. Union Security of Section—Union Security, Section 1, was agreed to; also No. 2.

Q. Proceed. Checkoff?

A. Section 4 regarding the Checkoff was not agreed upon.

Q. Section 4? A. (Indicating.)

Q. Oh. Was there any mention made of the

(Testimony of Fred Rotter.)

checkoff, if the maintenance of membership was agreeable?

A. It was definitely mentioned that—by Mr. Collins that maintenance of membership was agreeable.

Q. In the event the maintenance of membership was agreeable with the union, was there anything said about the checkoff? Would we or would we not give them the checkoff?

A. If the maintenance of membership was agreeable to Mr. Despol or the United Steelworkers, that the checkoff would also be agreeable.

Q. Proceed. Hours of Work.

A. The Hours of Work were agreeable as long as the United Steelworkers assisted in every way possible that the strikes or work stoppages would not involve or jeopardize production. [1210]

Q. Proceed. Wages. What wages were agreed upon or offered them?

A. As stated, Mr. Collins was going to submit a wage schedule to compare with a wage schedule Mr. Despol had in mind, but other than that Mr. Despol refused to present or bring up the matter of wages in the presence of the witnesses.

Mr. Tyre: Will you read that answer?

(The answer was read.)

Q. (By Mr. Collins): Was there anything said about the Gaffers & Sattler rate?

A. There was a mention made of Gaffers and Sattler.

(Testimony of Fred Rotter.)

Q. What was said about it, and who said it?

A. Mr. Collins mentioned that "Inasmuch as we are range manufacturers we would have to stay within a range rate of other manufacturers of like products."

Q. Was anything said about Wedgewood?

A. Wedgewood and Western Stove were also mentioned.

Q. Was anything said about any other benefits being taken away from the employees or retaining, even though we signed a contract embodying the going rate in the stove industry?

A. The going rates were to prevail as long as they were within reason of the request of Mr. Despol's contract. And in conjunction with the going rates of the area of like manufacturers; and that no other benefits of any kind would in any way be jeopardized. [1211]

Q. Do you know, as the payroll officer in charge of personnel for the Pioneer Electric Company, now, whether or not the rate the employees are now receiving is higher than other rates in the stove industry in this area?

A. Whether or not they are higher?

Q. Yes.

A. They are about on an equal basis.

Q. In addition to this wage rate, do they get other advantages that are of a financial nature?

A. Definitely other financial benefits are there in the form of Christmas funds, profit sharing plan, employees' profit sharing plan, contributions made by the company alone.

(Testimony of Fred Rotter.)

Q. What percentage of these contributions you are discussing, what percentage do they bear to the wages of the employees?

A. These additional ones?

Q. Would you say it was as much as 15 or 20 per cent?

A. Anywhere from 22 to 23½ per cent.

Q. Now your testimony would be they get the going rate in the stove industry, generally speaking, and in addition to that they receive 20 per cent in addition to these other advantages?

A. Yes.

Q. 20 to 22 per cent? A. Yes. [1212]

Q. Was there any agreement on the night shift bonus? A. There was.

Q. Was there any agreement on holidays?

A. Definitely.

Q. Was there any agreement on seniority?

A. All rights agreed to on the seniority clause.

Q. Was there any agreement about vacations?

A. Some agreement; not fully to the request of Mr. Despol.

Q. What was the offer on vacations?

A. Offer of one week's vacation with one year's continuous service.

Q. What about more than one year's service?

A. Two weeks' vacation for more than one year of service was still under discussion.

Q. What offer was made for employees with more than five years or five years?

A. There was a mention made there of enclos-

(Testimony of Fred Rotter.)

ing two weeks' vacation for employees of five years and more.

Q. Grievance procedure, was there any agreement on that?

A. Full accord reached on the grievance procedure.

Q. Grievance records.

A. Grievance records were discussed at length, involving considerable detail work in the personnel department but conceded to.

Q. We agreed to that? A. Yes. [1213]

Q. Discharge Cases, the method of handling people that were unfairly discharged, was agreement reached on that?

A. There was favorable agreement.

Q. Recalled Employment, did we agree to that clause? A. We did.

Q. Benefits and Privileges, we agreed we would not take anything away from the people?

A. That is right.

Q. Leave of Absence?

A. Was granted in every respect as far as sickness or other reasons.

Q. The section on veterans, what happened about veterans? A. Conceded to.

Q. Veterans Committee?

A. Was agreed upon.

Q. Military Leave. A. Was granted.

Q. Group Insurance.

A. Was discussed and granted.

Q. Safety and Health.

A. Was agreed upon.

(Testimony of Fred Rotter.)

Q. Miscellaneous, the request the union have a bulletin board, did we agree to that?

A. We did.

Q. Miscellaneous Continued, did we agree to that? [1214]

A. Yes.

Q. Sick Leave, what was done about sick leave?

A. Sick Leave was not agreed upon to their abnormal request of too long a period of sick leave requested.

Q. Was the matter still subject to negotiation?

A. Yes.

Q. Hours of Work, Continued.

A. Duplication of another——

Q. Speak your answer out so the reporter can get it.

A. Continuation of former paragraph there regarding hours of work was agreed upon, providing no unnecessary strikes or stoppage affect the production.

Q. Did we agree on the question of terminating the contract?

A. We did.

Q. Well, one more question. Did I, at any time, tell Mr. Despol that I wouldn't discuss the terms of the contract with him any longer?

A. No, you did not tell him that.

Q. Did I ever tell Mr. Conway I would no longer discuss the terms of the contract with him?

Mr. Tyre: Objection. It assumes a fact that this witness hasn't testified to, that is, Mr. Conway's presence at any time of these meetings.

(Testimony of Fred Rotter.)

Q. (By Mr. Collins): Was Mr. Conway present at any meeting [1215] you attended, Mr. Jerry Conway? A. Yes, I recall he was.

Q. Did I at any time tell Mr. Conway I would no longer continue to discuss the terms of the contract and bargain with him?

A. You did not at any time mention that.

Mr. Collins: You may cross-examine.

Cross-Examination

By Mr. Nicoson:

Q. I believe you testified the other day, Mr. Rotter, and also during the course of your present examination that you are now the personnel manager of Pioneer Electric, or some other such title; is that correct? A. Yes.

Q. What is that title?

A. Personnel manager of the Pioneer Electric.

Q. It is also a fact you became such on the 4th day of February this year; is that correct?

A. Correct.

Q. Prior to that time, you held some similar position with the O'Keefe and Merritt Company?

A. Correct.

Q. Is that correct? A. Correct.

Q. Directly after V-J Day, you recall the occasion of the cancellation of the Army contracts?

A. Vaguely, due to the fact it affected the number of employees—affected the employees in the factory and we had instructions to dismiss some.

(Testimony of Fred Rotter.)

Q. When you speak of employees, are you speaking only of the O'Keefe and Merritt or are you speaking also of Pioneer?

A. O'Keefe and Merritt.

Q. Do you know whether or not the Pioneer Electric Company made reduction right after V-J Day or so?

A. They made some reduction.

Q. Could you tell us about how much.

A. I would not. That would be guess work.

Q. Can you tell us how many employees of Pioneer Electric Company there were, if any, on the day of the election, which was November 20th?

A. Anywhere from possibly four to a dozen.

Q. Four to a dozen. And do you know the type of work those employees were doing?

A. No, I do not.

Q. You couldn't say whether they were largely clerical or something else?

A. No, sir.

Q. Could you tell us if they were employed out in the plant or in the office?

A. No, I couldn't, because terminations and inventories and everything else, anyone just in observance couldn't tell [1217] which they were connected with, whether office or production.

Q. Do you know whether or not Pioneer was doing any work of any kind at that time?

A. Yes.

Q. What were they doing?

A. I assume they were doing some work by the fact that they were still having rollers and staters coming through our pregation department.

(Testimony of Fred Rotter.)

Q. At the time of the election, this wall out there had been taken out, is that right?

A. At the time of the election?

Q. Yes.

A. Thereabouts somewhere; sometime after that.

Q. Now, let's go back over this service employees department again. It is a fact, is it not, that you submitted those names upon Board's 12-B because the company felt they should be eligible to vote in the election? Isn't that correct? A. Yes.

Q. I think you said the reason the company felt that was because you expected to transfer them back on the O'Keefe and Merritt payroll shortly thereafter. A. Yes.

Q. Or perhaps it was in the process of being transferred?

A. No, we contemplated it the first of the year.

Q. Now, on February 4th, when you became personnel manager or labor relations man—was it personnel? A. Personnel, yes.

Q. For Pioneer, did the employees of the O'Keefe and Merritt just go over on the Pioneer payroll? Is that about the way it happened?

A. We set up a whole new payroll there, a check register and everything else.

Q. In other words, you took the names off the O'Keefe and Merritt payroll and put them over on the Pioneer payroll; is that about right?

A. That is about the substance of it.

Q. Did you receive from the employees any

(Testimony of Fred Rotter.)

applications for employment by the Pioneer Company? A. I beg your pardon?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: No.

Mr. Collins: Read the question. I don't believe I understand the question.

(The question was read.)

Q. (By Mr. Nicoson): That is, I am speaking now of February 4th when you made this transfer over. A. Yes.

Mr. Collins: From the employees? [1219]

Mr. Nicoson: Yes, of O'Keefe and Merritt, when they went over to Pioneer.

Mr. Collins: You mean they asked for work there or filled out some kind of a questionnaire or something?

Mr. Nicoson: Yes.

Mr. Collins: I move the answer be stricken on the ground the question itself is vague. I will ask the counsel to reframe the question.

Mr. Nicoson: He understood the question.

Trial Examiner Kent: The record may remain. The witness apparently understood it. I think it has been answered.

Of course, Mr. Witness, I don't know whether you have been here during the hearing. I don't think you have. At any time a witness doesn't understand a question he is at liberty to ask to have it explained.

(Testimony of Fred Rotter.)

Q. (By Mr. Nicoson): Now, when was it you attended the first of these meetings where Mr. Collins and Mr. Despol and the others were present?

A. I don't exactly remember the date. It was sometime the last part of December.

Q. Did you attend any meetings in January at which Mr. Despol and Mr. Collins and others were present? A. One.

Q. When was that meeting? [1220]

A. I don't recall the specific date. There somewhere between the 9th and 16th of January.

Q. Was that one of the occasions when Mr. Collins said that there were arrangements being made to have some other company take over O'Keefe and Merritt? A. Yes.

Q. Did Mr. Collins tell Mr. Despol or Mr. Conway at that time that they had already signed a contract with the Pioneer Electric Company?

A. No.

Mr. Collins: Just a moment. I object to the form of that question as assuming a fact not in evidence and being ambiguous. What sort of a contract do you mean with the Pioneer Electric Company?

Mr. Nicoson: In evidence as Board's Exhibit——

Mr. Collins: You mean a contract with O'Keefe and Merritt with the Pioneer?

Mr. Nicoson: The Pioneer.

Mr. Collins: I move the answer be stricken on the ground it doesn't tend to prove or disprove anything at issue in this case. The evidence shows

(Testimony of Fred Rotter.)

that O'Keefe and Merritt continued to bargain and continued to have employees whether or not they were under any duty to disclose to Mr. Despol that they had signed a lease of their factory, other than to indicate as is the testimony there was some [1221] contemplation of that in prospect. I don't see where that proves anything.

Mr. Nicoson: Your Honor, my position is quite clear and I think it is also obvious. At the time he was telling that they were contemplating transferring these things over to Pioneer, they had already signed a contract to do so, just a matter of the question of the time in putting the thing into execution.

Trial Examiner Kent: The record may remain. I will overrule the objection.

Q. (By Mr. Nicoson): Do you recall during the discussions about the contract that Mr. Collins told Mr. Despol with respect to the Christmas bonus that he could not make that part of the contract, because that came out of the profits of the company? Isn't that right? A. That is right.

Mr. Nicoson: That is all.

Mr. Collins: Mr. Rotter,—

Mr. Tyre: May we have further cross-examination?

Mr. Collins: Oh, yes.

Mr. Garrett: Before the further cross-examination, can I have the last question and answer read to me?

(The record was read.)

(Testimony of Fred Rotter.)

Mr. Garrett: Thank you.

Q. (By Mr. Tyre): Mr. Rotter, when was it that you gave [1222] these three or four employees

A. F. of L. cards?

A. I don't recall the date, whether it was December or January.

Q. That is December of 1945?

A. 1945 or January of 1946.

Q. Where did this incident take place?

A. In my office.

Q. And who were those employees?

A. It was Mr. McNinch, Mr. Jack Miles, Mr. Graham. Is that three or four? There were four or five, I don't recall the other two.

Q. What time of the day was this?

A. Either during the morning or afternoon rest period or following the rest period.

Q. Were these people Pioneer Electric Company or O'Keefe and Merritt employees at that time?

A. O'Keefe and Merritt.

Q. And are these employees now Pioneer Electric Company employees? A. All but one.

Q. Which one is that? A. Jack Miles.

Q. How many cards did you give to each of them?

A. Not more than two or three apiece, didn't have a large enough stock to—— [1223]

Mr. Tyre: Will you read the last part of that answer?

(The answer was read.)

(Testimony of Fred Rotter.)

The Witness: To work supplying applications at random.

Q. (By Mr. Tyre): How many more cards did you have there?

A. Not more than one or two.

Q. After you had given out these?

A. That is right.

Q. Mr. Collins asked you a number of questions about Board's Exhibit No. 10, which was the proposed CIO contract. You testified what was agreed to and what was not agreed to. At which meeting were you referring to when you testified concerning those various conversations?

A. The first meeting the latter part of January we discussed them at random, and Mr. Collins attempted to bring out a few questionable clauses intending to take them into consideration and be more specific in his commitment in the following meetings. In the following meeting some were agreed upon and some were not, that is, some additional were agreed upon.

Q. Is it your testimony that these various and lengthy conversations as to what was agreed on and what was not agreed to, and Mr. Collins showed you Board's Exhibit No. 10, those were statements made at the meeting in January of 1946?

A. Some in January and some in December.

Q. So when you testified as to what Mr. Collins had agreed [1224] to and what he had discussed with Mr. Despol, some of that was at the first meeting you attended and some at the meeting later in January that you attended?

A. Yes.

(Testimony of Fred Rotter.)

Q. Was Mr. Conway at the first meeting that you attended?

A. I don't think he was. Whether he was at the first or second I can't specifically say. I think it was the second.

Q. Wasn't he at both meetings you attended?

Mr. Collins: Objected to as having been asked and answered. The witness has testified that he does not think so, to the best of his recollection.

Mr. Tyre: I think he is trying to recall.

The Witness: I am trying to, but I am not very successful at it.

Trial Examiner Kent: He may answer.

The Witness: I can't place any specific incident there that will freshen my memory.

Q. (By Mr. Tyre): You don't know whether he was there or not, is that your testimony?

A. At both meetings.

Q. You don't remember whether he was present at both meetings? A. That is right.

Q. Do you recall Mr. Despol stating to Mr. Collins that United Steelworkers of America were asking for 25 cents per [1225] hour increase of wages?

The Witness: Will you read the first part of that?

(The question was read.)

The Witness: Both at that time and various other times.

Q. (By Mr. Tyre): Just is that answer yes or no? A. Yes.

Q. When did you hear him make that statement? A. The first meeting.

(Testimony of Fred Rotter.)

Q. Did he also make it at the second meeting?

A. I don't recall.

Q. I think it is your testimony that Mr. Despol had handed Mr. Collins a copy of the Steelworkers' proposed contract at the first meeting you attended, is that right? A. Yes.

Q. Do you recall Mr. Collins telling Mr. Despol that he had not seen that contract before and he would like to look it over? A. No.

Q. Before he negotiated on it? A. No.

Q. Were you present at the meeting in Mr. Collins' office when late in the meeting a lady client of Mr. Collins' came into the office?

Mr. Collins: Objected to as immaterial, not tending to prove or disprove anything at issue. [1226]

The Witness: That I could not remember.

Trial Examiner Kent: The record may remain.

Mr. Tyre: What?

Trial Examiner Kent: I said the record might remain.

Q. (By Mr. Tyre): You don't recall them being present at such a meeting?

A. Whether it was the meeting with Mr. Despol or not I don't recall. I remember having been in his office around or about that time when a lady did call. Whether it was at Despol's meeting or not I don't recall.

Q. Were you present at a meeting in Mr. Collins' office where Mr. Despol was present about January 3, 1946?

Mr. Collins: Objected to as having been asked

(Testimony of Fred Rotter.)

and answered. The witness has testified he does not remember the exact dates.

Trial Examiner Kent: What is the purpose?

Mr. Tyre: Cross-examination. He has said he attended two meetings. I am trying to specify the dates.

Trial Examiner Kent: He may answer that.

The Witness: I don't recall the specific dates.

Q. (By Mr. Tyre): I think you testified before that you thought you attended the second meeting somewhere between the 9th and 16th of January. I ask you now whether or not you are sure it was that late or whether it could have been the 3rd of January. [1227]

A. It might have been earlier.

Q. You are sure that Mr. Conway was present at the second meeting that you attended, is that right?

A. I am not sure whether it is the first or the second.

Q. Do you recall a meeting where Mr. Despol requested Mr. Collins to provide him with written proposals that the company wanted to make?

A. The first part of that question, please.

(The question was read.)

A. Written proposals of what?

Q. You don't understand the question?

A. Written proposals of what?

Q. The company's proposed provisions for the Steelworkers contract.

A. None other than regarding rates.

(Testimony of Fred Rotter.)

Q. Mr. Despol asked Mr. Collins to put in writing the company proposal as to rates, is that right?

A. He didn't ask Mr. Collins to do so.

Q. Your testimony is, then, that at none of the meetings that you attended did Mr. Despol ask for any written proposals?

Mr. Collins: Objected to as assuming a fact not in evidence. The witness does not testify that such a conversation was not had. He has testified that he does not recall such a conversation.

Mr. Tyre: I will withdraw the question. [1228]

Trial Examiner Kent: He may answer.

Mr. Tyre: That is all right, withdraw it. That is all.

Mr. Collins: Mr. Rotter—

Mr. Reed: Is this redirect, Mr. Examiner?

Mr. Collins: Yes, I wanted to clear up something.

Trial Examiner Kent: Did you want to question the witness?

Mr. Collins: Oh, excuse me.

Trial Examiner Kent: We might take a recess for a minute or two.

(A short recess was taken.)

Trial Examiner Kent: All right, Mr. Reed, you may proceed.

Q. (By Mr. Reed): Are the employment records of the Pioneer Electric Company separate and apart from the records of the O'Keefe and Merritt Corporation? A. Yes, they are.

(Testimony of Fred Rotter.)

Q. Are they separate in location as well as in make-up? A. Not as yet.

Q. Not as yet. Regarding those records and the terminating of the group of employees we are concerned with here from the O'Keefe and Merritt Company and the hiring of those employees by the Pioneer Electric Company, do those records show a transfer or do they show that termination took place for those employees by O'Keefe and Merritt and do those records [1229] show that those employees are new hires upon the records of the Pioneer Electric?

A. They do not show that they are new hires, just a physical transfer of the file, with the general assumption of all involved with the records knowing that they are Pioneer employees. The seniority rights are continuing and obviously we didn't want to clutter it up to go into the detailed work there of making the mention on the application as to their transfer taking place.

Q. Was the reason for that the agreement entered into by and between the O'Keefe and Merritt and the Pioneer Electric—

A. Primarily—pardon me.

Q. —guaranteeing a continuance of their seniority and other benefits.

A. The main and primary reason for it.

Q. At one place in your testimony you referred to the taking over of O'Keefe and Merritt by the Pioneer Electric Company. Did you mean that literally or did you mean the taking over of the

(Testimony of Fred Rotter.)

manufacturing of certain products of the O'Keefe and Merritt? A. Manufacturing of products.

Q. In other words, your statement that Pioneer Electric had taken over O'Keefe and Merritt was not a fully explanation of the thought you had in mind? A. No. [1230]

Mr. Reed: That is all.

Redirect Examination

By Mr. Collins:

Q. Mr. Rotter, did you ever have any other cards besides those three that you mentioned on cross-examination? A. No.

Q. Who gave you those cards?

A. No one—I received them from representatives of the A. F. of L.

Q. Did you have any C.I.O. cards?

A. I did.

Q. How many C.I.O. cards did you have?

A. Anywhere from 10 to 20 of them.

Q. Where did you keep them?

A. In the desk drawer.

Q. Did you hand those out to just anybody who came in looking for a job, or did you have to have people ask you for them?

A. People asked me for them.

Q. And the three that you gave them to are the only three that asked you for them? A. Yes.

Q. Now, why did you not require applications from the employees of O'Keefe and Merritt when

(Testimony of Fred Rotter.)

they went to work for the Pioneer Electric Company? [1231]

A. Too much detail involved in signing up new applications regarding around 400 employees, much more expedient to make the physical transfer and observations of the employees transfer to Pioneer.

Q. You don't remember whether or not the wall was torn down between O'Keefe and Merritt and Pioneer Electric at the time of the election, do you?

A. I don't recall the specific date that wall was torn down.

Q. Was it made clear in these negotiations between myself and Mr. Despol or Mr. Conway that I was bargaining merely for the employees of O'Keefe and Merritt Company? A. Yes.

Q. And was the statement made to him to the effect that the employees in the factory department were very likely going to work for the Pioneer Electric Company?

A. The second meeting emphasis was strongly mentioned.

Mr. Collins: That is all the redirect. Recross-examination.

Recross-Examination

By Mr. Nicoson:

Q. In answer to Mr. Reed's question you said that the Pioneer was merely taking over the manufacturing and production of O'Keefe and Merritt.

A. That is right.

(Testimony of Fred Rotter.)

Q. Is that a fair resume of your statements?

A. That is right. [1232]

Q. Do you know whether or not there was any substantial difference in the manufacturing procedure after Pioneer took over than there was when O'Keefe and Merritt operated up to February 4th?

A. Not immediately.

Q. Has there been since that time?

A. Minor.

Q. But no substantial difference?

A. No substantial.

Q. In other words, the manufacturing business of O'Keefe and Merritt prior to February 4th is substantially being performed by the Pioneer at the present time, is that correct? A. Yes.

Q. And in the same location that O'Keefe operated? A. Yes.

Q. The same products are being made?

A. Yes.

Mr. Nicoson: That is all.

Q. (By Mr. Reed): Do you know whether or not O'Keefe and Merritt were actually in production upon products that were to be manufactured by Pioneer Electric under the lease that was signed between the two companies prior to the time of the signing of that contract? In short words, were O'Keefe and Merritt actually manufacturing any of the products which [1233] were to be manufactured by Pioneer Electric? That is, at the time that this deal was made.

A. Not a completed product. They were fabricating parts. [1234]

(Testimony of Fred Rotter.)

Q. They were fabricating parts. So that in answer to a question that you had put to you by Mr. Nicoson, changes were not apparent to you upon the manufacturing of those parts insofar as as the way that the manufacturing was done by Pioneer Electric as against the way it was being performed by O'Keefe and Merritt?

Mr. Nicoson: I think I am going to have to object to that question as being ambiguous.

Mr. Reed: I will state the question differently.

Q. (By Mr. Reed): Are you a production man? A. I am not.

Q. Would you recognize any particular changes in production methods that might occur as between the way those products or parts were being manufactured by one company as against another company? A. I would not.

Mr. Reed: That is all.

Redirect Examination

By Mr. Collins:

Q. Mr. Roter, O'Keefe and Merritt were not making gas ranges at that time, were they?

A. Not the competed product.

Q. Is Pioneer making gas ranges?

A. They are now.

Q. Was Pioneer making generators at the time that you have testified to? [1235] A. Yes.

Q. O'Keefe and Merritt were not making generators, were they? A. No.

Mr. Collins: That is all.

(Testimony of Fred Rotter.)

Recross-Examination

By Mr. Garrett:

Q. Now, Mr. Rotter, at whose request did you prepare the payroll lists which are in evidence as Board's Exhibit 12-B?

A. At a general request of Mr. Durant. May I change that? It was not a general request, a statement of fact mentioned to all employees.

Mr. Collins: Mr. Rotter, do you know what 12-B is?

Q. (By Mr. Garrett): That is the exhibit that we were looking at on which we referred to those challenges on the Service Incorporated employees.

A. I am confused on that. I want to back track there. Will you read me his question?

(Question read as follows: Now, Mr. Rotter, at whose request did you prepare the payroll lists which are in evidence as Board's Exhibit 12-B?)

A. At the request of Mrs. Phoenix of the National Labor Relations Board.

Mr. Nicoson: Let the record show he has Exhibit 12-A before him. [1236]

Q. (By Mr. Garrett): Was that request made direct to you or to you through Mr. Durant?

A. That was made direct through me.

Q. Here at the offices of the Board?

A. At the office of the Board, and also through telephone conversation with Mrs. Phoenix.

(Testimony of Fred Rotter.)

Q. You talked to her on the phone as well as meeting her here on the two occasions when there were meetings; is that correct? A. Yes.

Q. You were here at the first meeting when the election was generally discussed and the unit?

A. I think that was the first meeting.

Q. Yes. A. I was here.

Q. You were here at some subsequent meeting at which there was a stipulation signed; is that right? A. That is right.

Q. In addition to that you had various phone conversations with her? A. One or two.

Q. One or two. Did they precede the meetings or follow them? A. Followed.

Q. Did the preparation of this list of voters precede or [1237] follow the meetings here at the Board?

A. The first list or one list—whether it is the same or not I don't recall—followed the first meeting. And the final list followed the second meeting.

Q. So there were two lists prepared; is that correct? A. I think so.

Mr. Garrett: If your Honor please, I notice the hour of 12:00 o'clock has arrived.

Trial Examiner Kent: Yes. We will take a recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [1238]

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: You may proceed.

Mr. Collins: Mr. Rotter, would you take the stand, please? Or are we through with Mr. Rotter?

Mr. Garrett: No. I had him on cross-examination.

This is my first cross-examination. All the other parties have cross-examined and there has been re-direct and recross, and everything. But just before the adjournment was the first time I could make myself heard.

FRED ROTTER

called as a witness by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Garrett:

Q. How come there were two lists prepared, Mr. Rotter?

A. The second list was supposed to have a more authentic list including new employees and excluding terminated employees.

Q. Now, go back for a moment to these membership applications in the A.F.L. and C.I.O. unions that you had. Did any body tell you, Mr. Rotter, to secure those application cards?

A. No one told me.

Q. Did anybody tell you to keep them in your office? [1239] A. No.

Q. How did you happen to do it?

(Testimony of Fred Rotter.)

A. More through coincidence, I think, thinking we might expedite matters.

Q. That was your own idea; was it?

A. Yes.

Q. All right. Now, getting back to these lists, Mr. Rotter, were they prepared under your direction? A. Yes.

Q. By your clerical help, I presume?

A. That is right.

Q. Were they prepared from the payroll records as they existed at the time each list was prepared?

A. Yes.

Q. How are those payroll records kept, in book or card form?

A. Both. Clock card forms and time checked against the clock cards to verify the length of time each employee has accumulated in a week. The check register is then made up, to obtain the amount of hours and earnings that the men were paid.

Q. Do you use a set of time clocks that punches the employees' time cards for use in connection with the I.B.M. machines? A. We do.

Q. And is the time taken off on the cards or into book sheets?

A. I don't quite follow your question. [1240]

Q. You run these cards through the I.B.M. machines, the cards the employees take to the clocks and punch, and you get the employees' time that way, is that correct? A. That is right.

Q. And you also get the distribution of it for your cost accounting and all that sort of thing that way? A. That is right.

(Testimony of Fred Rotter.)

Q. Now, in connection with the employees' compensation, and only that, after the time is taken off the cards by the I.B.M. machines, is it put on a system of cards, a system of ledger sheets, or on a check record?

A. Checked first against the master weekly clock card to determine that all job cards have been turned in for a specific period of time, and then accumulated on a weekly basis and recorded on a weekly run-off as well as a check register run-off.

Q. Now, specifically, what records were those lists taken from that you gave Mrs. Phoenix on these two occasions?

A. From an additional record which is termed as a rate card, and then checked back against the specific payroll period.

Q. In other words, you took the information which you gave Mrs. Phoenix off of cards which had been made after the information on these employees' clock cards was correlated on the machines, and run off onto the weekly run-off and the [1241] check register, isn't that right?

A. Checked against the run-off of the weekly check register, yes.

Q. Well, when the girls were copying off this information that was given Mrs. Phoenix, were they copying from cards, ledgers, or what?

A. From rate cards.

Q. And that is a card on which information from the employees' clock cards is distributed after the employees' clock cards are interpreted by the I.B.M. machine, is that correct?

A. No.

(Testimony of Fred Rotter.)

Q. All right, will you kindly explain that?

A. We had a separate card there, what we term a rate card, giving the specific classification and the rate pertaining to the employee. A. Yes.

A. After making up our list in alphabetical cards which did not coincide with the check register, we checked the list we made up against the payroll to determine definitely that there was no one in there that should not be in there or that someone not in there should be in there.

Q. Now, the first list you supplied Mrs. Phoenix was at her request? A. Yes. [1242]

Q. Was that before the first of the meetings you had with her here in this office?

A. Well, that I don't definitely remember. To the best of my knowledge that list was requested prior to the first meeting to determine the classifications of the employees.

Q. As a matter of fact, you gave her that list in connection with the investigation the Board was making on the representation petition that the C.I.O. had filed, did you not? A. Correct.

Q. After you knew that the C.I.O. had filed a representation petition, but before there had been any meetings here in connection with it, is that correct? A. I think that is correct.

Q. All right. When did you first know that first list was not acceptable to Mrs. Phoenix and that you would have to make another one?

A. After the hearing, after the second hearing.

(Testimony of Fred Rotter.)

Q. Did you get that information from Mrs. Phoenix by phone? A. No.

Q. Letter?

A. I received instructions that the termination—just prior to the termination of the meeting.

Q. All right. What was said and by whom on that subject?

A. I presume at the meeting, N.L.R.B. meeting?

Q. Yes. You have already testified, you testified on direct [1243] examination and cross-examination about these two meetings here when the Board first called you last week. You remember that? A. Yes.

Q. Now, directing your attention to that second meeting—I don't want you to go through everything that was done again—but I want you to tell me what you remember, if you remember anything, concerning what was said by anyone on the subject of these lists, the old list that you had prepared previously and the new list that you now testify you were asked to prepare just prior to the termination of this second meeting here at the N.L.R.B.

A. During the latter part of the meeting it was brought out that——

Q. Don't say "it was brought out." Say what was said and who said it, if you can remember. Or if you can't remember, why, tell us you can't remember. Try to tell us what was said.

A. I can't recall anything other than specific instructions from Mrs. Phoenix to the effect that I make up a new list of employees, excluding all

(Testimony of Fred Rotter.)

terminated employees and listing all eligible voters.

Q. Well, did she tell you who was to be an eligible voter?

A. Yes. There was an exclusion there made by the various representatives of both unions, and agreed upon by various representatives [1244] of the unions that certain employees be excluded from the list. The employees mentioned were timekeepers, production workers——

Q. What was that last?

A. Timekeepers. Production control men. Pardon me.

Q. Timekeepers?

A. Production control men or expeditors.

Q. Go slow, now, because I can't write shorthand. Production control men?

A. Or expeditors.

Q. Or expeditors.

A. Or anyone else that had anything to do with——anyone else that had nothing to do, I should say, with production. That includes one or two more specific categories, one of which was two or three laboratory experimental men.

Q. Now, at the time she made this request, that you prepare a new list, did she hand you back the old list which you had prepared?

A. I do not recall.

Q. Did you keep a copy of the first list you prepared? A. I have a copy.

Q. You have a copy of it in your records?

A. Yes.

(Testimony of Fred Rotter.)

Q. You mailed the original to Mrs. Phoenix, I take it? A. Yes. [1245]

Q. You can't recall whether or not she ever gave it back to you? A. I do not.

Q. Now, you didn't put any employees down on that first list except those that were working at the time of your making of the list, did you?

The Witness: Repeat that, please.

(The question was read.)

The Witness: That is right.

Q. (By Mr. Garrett): Then when Mrs. Phoenix, at the second N.L.R.B. meeting, asked you to prepare a new list, excluding terminated employees, she referred, did she not, to employees that had been terminated between the time of that meeting and the time you made up the first list?

A. That is correct.

Q. How did the question of these Service-Incorporated employees come up?

A. That was voluntary action on my part, in assuming they were coming back to the O'Keefe & Merritt Company. I questioned Mrs. Phoenix whether or not to include them on the second list.

Q. Tell us where this question was asked. Was it in a meeting or over the telephone?

A. That was over the telephone while I was in the stage of preparing the list.

Q. After the second N.L.R.B. meeting? [1246]

A. Yes.

Q. All right. You called her up? A. I did.

Q. At the Board here?

A. At the Board here.

(Testimony of Fred Rotter.)

Q. You had a telephone conversation with her?

A. Yes.

Q. That was on your call to her, not her call to you; is that correct?

A. That is correct; my call to her.

Q. What did you tell Mrs. Phoenix then?

A. I told her of the seven or eight employees in question, and stated their occupation and their connection—no connection at that time. However, the new connection coming up and asked whether they would be considered eligible or not. She stated that she was not in a position to give a definite commitment at the time, but to list them and she would challenge them and see what disposition was to be made of them later on.

Q. There were eight of those employees; weren't there? A. I think that is the number.

Q. Finally incorporated in the second list?

A. Yes.

Q. Were those eight employees incorporated in your first list? A. I think not.

Q. Did anybody representing either one of the unions at [1247] either one of the N.L.R.B. meetings that you attended request these eight Service-Incorporated employees be incorporated in the list you made up?

A. They did not request they be added.

Q. Did any representative of either of the unions, or any of the unions, request that—at either of these meetings—employees of Pioneer Electric be incorporated in either of the lists you made up?

A. No. [1248]

(Testimony of Fred Rotter.)

Q. Now, you have fixed the time of your attendance upon the second meeting you testified to in Mr. Collins' office at which the contract was discussed, as being between January 9 and January 16, and then on cross-examination by Mr. Tyre you stated that it might have been even earlier than January 9th, as early as January 3, I think you said in response to his question. Now can you tell me the approximate length of time that had elapsed between the first meeting in Collins' office you attended and the second meeting which you have today tried to fix the time of. I don't ask you to establish the date of the first meeting, but the approximate time elapsing between that meeting and the second meeting about which you have testified.

A. I would estimate approximately two weeks.

Q. Did you ever attend any other meetings with the C.I.O. besides the two which you have mentioned?

A. I did not.

Q. Concerning these persons to whom you gave out upon request A. F. of L. application cards, whom you have recalled as being McNinch, Johnny Miles, Graham, and two others whose names you did not remember, are any of those persons still on the O'Keefe and Merritt payroll?

A. Yes.

Q. Which ones or which one? [1249]

A. Jack Miles.

Q. What does he do?

A. He is at present to the best of my knowledge a truck driver.

Q. Has he always done that kind of work there at the plant?

A. No.

(Testimony of Fred Rotter.)

Q. Withdraw that. At the time you gave him the A. F. of L. application card or cards, what kind of work was he doing?

A. He was in the receiving department.

Q. Is that where they receive the stuff that comes in off the trucks? A. Yes.

Q. What was he doing there, loading and unloading trucks?

A. To the best of my knowledge, yes, and occasionally going out on pick ups.

Q. So that at the time you gave him the card he was not working for O'Keefe and Merritt, was he? He was working for Service, Inc., isn't that a fact? A. Theoretically only.

Q. But who did he get his pay checks from?

A. O'Keefe and Merritt. Might I retract that? I am trying to refresh my memory whether or not there was any transfer made. An O'Keefe and Merritt Company paycheck.

Q. Did you have charge at that time of the payroll for [1250] Service, Inc.? A. No.

Q. So you would not know whether John Miles was on that payroll or not at the time he got the application card?

A. I am trying to determine whether a transfer took effect or place at the time or whether it was in December or January.

Q. At any of these two conferences that you participated in in Collins' office at which Despol was present, did Despol bring up the question of a C.I.O. strike?

(Testimony of Fred Rotter.)

A. There was a mention made when the clause was discussed between Mr. Collins and Mr. Despol that Mr. Despol did mention the fact that he would not be in any position to control any particular strikes depending on the situation, and Mr. Collins tried to emphasize and be more specific—have Mr. Despol be more specific in the United Steel Workers contract to eliminate any possibility of work stoppages or strikes.

Q. Did Despol make any threats or say that the companies sold steel, in any one of those conferences in Collins' office?

A. He did mention that, at which meeting I don't specifically recall, he mentioned in a round about way that he was representing steelworkers, the United Steelworkers of America, and possibilities of that kind could occur. [1251]

Q. What did Collins say about that, if anything?

A. He mentioned that he wasn't worried.

Q. Was any mention made in either one of those conferences about taking the dispute about representation to the National Labor Board?

A. Numerous times.

Q. Who by?

A. Mr. Despol himself made a verbal mention there that if things weren't acted upon according to N.L.R.B. ruling, why, we would have to be resorted to further—have to be referred to N.L.R.B. for enforcement of the certification.

Mr. Collins, in turn, mentioned that "That is a matter in your hands, if you feel that is going to be necessary. We have no objections."

(Testimony of Fred Rotter.)

Q. Directing your recollection back to the second meeting in Collins' office, would you now give me to the best of your recollection the names of the persons present besides yourself, Mr. Collins and Mr. Despol?

A. Milton Daley, Joe Arlotti. That is all I remember.

Q. You don't remember—you only remember those two at the second meeting besides yourself?

A. There were two others.

Q. Whose names you don't remember?

A. That is right.

Q. About the first meeting, who was there besides yourself, [1252] Collins and Despol?

A. Johnny Levascos, Frank Doyle, Percy Castro. One that I mentioned in previous testimony I don't recall the name of. Joe Sanchez.

Q. Was he the other one? A. Yes.

Q. Besides yourself, Collins and Despol there were four men from the plant; is that correct?

A. Yes.

Q. Well, was there anything else that you remember that was said by Mr. Despol at either one of those meetings in Collins' office about the situation he was in with respect to Pioneer employees when the election only covered O'Keefe and Merritt employees?

The Witness: Will you read that for me?

(The question was read.)

The Witness: A little question there regarding to who you are referring to being in question.

(Testimony of Fred Rotter.)

Mr. Nicoson: May I have that answer read?

(The answer was read.)

Mr. Garrett: I think by stipulation the answer may go out as being non-responsive.

Q. (By Mr. Garrett): Isn't it a fact that Despol said at one or the other of those meetings that he realized he was in a fix because he had forgotten to have the Pioneer [1253] Electric included in the election, because he figured the N.L.R.B. would help him out of that fix?

A. There were words mentioned to that effect by Mr. Despol.

Mr. Tyre: I move that be stricken, as calling for a conclusion of this witness. Let him state exactly what was said and not his conclusions as to the effect of what was said.

Mr. Garrett: I think that is a fair——

Q. (By Mr. Garrett): Just tell us a little more in detail——

Mr. Tyre: May I have that motion ruled on?

Trial Examiner Kent: The answer may be stricken. Reframe the question.

Mr. Garrett: May the question be read again to the witness?

Trial Examiner Kent: Very well.

(The question was read.)

The Witness: He did. [1254]

Q. At any of those meetings did Mr. Despol suggest that you have an election among the Pioneer

(Testimony of Fred Rotter.)

Electric employees to see who they wanted to represent them? A. He did mention that.

Mr. Garrett: That is all.

Mr. Collins: No questions.

Q. (By Mr. Nicoson): Now, Mr. Rotter, just a few questions. I will try to get rid of you and let you go. I believe your testimony was that you worked for O'Keefe and Merritt for approximately six or seven years, is that correct?

A. In that capacity.

Q. Prior to that time you had worked for them in some other capacity? What capacity prior to that time had you worked in?

Mr. Collins: Objected to as not proper cross-examination.

Mr. Nicoson: This is preliminary.

Mr. Collins: Very well.

Mr. Garrett: Will you please speak a little louder, Mr. Nicoson?

Mr. Nicoson: I am trying to find out what job he had prior to becoming personnel manager. As a matter of fact, I didn't know until he answered me there that he had any other capacity. This is purely preliminary, and that is all.

The Witness: Prior to becoming personnel manager I was [1255] on the payroll, in the payroll work, making out the payroll.

Q. (By Mr. Nicoson): What I am getting at is, you were personnel man prior to the war, weren't you? A. Yes, sir.

Q. And you had been then for a matter of say about two years? A. Yes.

(Testimony of Fred Rotter.)

Q. Prior to the war O'Keefe and Merritt Company had not manufactured any generators, had it?

A. No.

Q. It had manufactured gas appliances, gas stoves and things of that nature, is that right?

A. Also electric refrigerators.

Q. Also electric refrigerators. And by gas appliances, would that take in wall furnaces and floor furnaces?

A. That is right.

Q. Did they make the gas heaters that sit on the floor and tie in with a tube?

A. That is correct.

Q. When the war came along that sort of production was entirely eliminated, the gas appliances and stoves and heaters and wall furnaces and so forth, entirely eliminated?

A. Yes, it was.

Q. They went into the manufacturing of the generator?

A. Yes. [1256]

Q. And then Pioneer came in and helped manufacture the generators?

A. Yes.

Q. And then after V-J Day the government contracts were cancelled and you had very little of the generator work left, is that correct?

Mr. Collins: Just a moment.

Mr. Garrett: I don't think that is fair to the witness, as not differentiating between Pioneer and O'Keefe and Merritt.

Mr. Nicoson: All right.

Q. (By Mr. Nicoson): O'Keefe and Merritt had very little generator work left after the termination of the contract, is that correct?

(Testimony of Fred Rotter.)

Mr. Collins: Just a moment. Object to that as assuming a fact not in evidence. The evidence is that O'Keefe and Merritt did not have any generator work, that Pioneer did, as I recall.

Mr. Nicoson: That is not my recollection. I recall Mr. O'Keefe testified that he was a prime contractor with the government on this generator business particularly. Well, anyhow, may he answer, did you say?

Trial Examiner Kent: I was going to say I thought that they were manufacturing several lines at that time during the war of war products. I seem to have gotten that impression [1257] some place from the record.

Mr. Garrett: I got the impression that those generators were just a part of the product they were making, the generators went into something else.

Trial Examiner Kent: Yes, that is the impression I seem to have.

Q. (By Mr. Nicoson): What is the fact as to that, Mr. Rotter? Were O'Keefe and Merritt manufacturing any generators during the war?

Mr. Collins: Objected to as calling for a conclusion of the witness. There is no foundation laid. This witness is not qualified to answer.

Trial Examiner Kent: I think it will help to clarify the record. I think this witness can answer and may.

Mr. Nicoson: Will you put the question to him?

(Question read.)

A. Generators and a few other products.

(Testimony of Fred Rotter.)

Q. (By Mr. Nicoson): A few other what?

A. Products.

Q. Well, now, what were those few other products?

A. During the period of the war, bomb fins, nests, ammunition nests, also some projectiles.

Mr. Garrett: Can I have the answer read?

(Answer read.)

Mr. Garrett: What do you mean by projectiles?

A. Projectiles.

Mr. Garrett: Those generators didn't go into any of those things, did they?

The Witness: 21 millimeter projectiles for military aircraft.

Mr. Collins: Bullets?

The Witness: Bullets.

Q. (By Mr. Nicoson): After the contract termination you had no contract then with the government to do any of that work, and by saying you I mean O'Keefe and Merritt, is that correct?

A. I would not be qualified to recall.

Q. Do you know whether or not O'Keefe and Merritt, shortly after V-J Day, did curtail the production of generators and their parts and those other things you have mentioned?

A. There was appreciable deduction there in production.

Q. Is it likewise true there was an appreciable reduction in Pioneer of the things they made?

A. Yes.

(Testimony of Fred Rotter.)

Q. Isn't it also true that after the government contracts were cancelled and the generator and business and such depreciated, as you have put it, then O'Keefe and Merritt began to think about reconversion into peacetime products; is that right?

Mr. Collins: Just a moment. That is objected to as [1259] calling for a conclusion of the witness. What O'Keefe and Merritt began to think about certainly has no reference to this witness.

Trial Examiner Kent: Read the question.

Mr. Nicoson: I will strike the question.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Nicoson): Wasn't it shortly after the termination of the contract that O'Keefe and Merritt began work of tooling up, laying the ground work to produce once again gas appliances, such as stoves, wall furnaces and so forth?

Mr. Collins: That is objected to on the ground it calls for a conclusion; no foundation laid. This witness has testified he knows nothing about the production. He is a personnel man. He gets the kind of help they ask him to get. [1260]

Mr. Nicoson: I don't think he testified about that. He testified to all concerned here, every lawyer in this room, pretty thoroughly about the various production things. The only question was are you a production man? His answer was no.

Trial Examiner Kent: My own opinion would be that he probably would know quite generally what the plant was doing, in view of the nature of his position. If, however, he don't, of course, he should say so.

(Testimony of Fred Rotter.)

Will you read the question?

Mr. Nicoson: What is the ruling?

Trial Examiner Kent: He may answer.

Mr. Nicoson: Please read the question.

(The question was read.)

The Witness: The contemplated production is unknown to me. There was some effort made in getting under way, as far as other production was concerned.

Q. (By Mr. Nicoson): Then, I think you have testified, that on or about February 4th, when Pioneer took over, that there were certain products in the course of production? That was your testimony; wasn't it? A. Certain parts.

Q. Certain parts. And what were those parts for? A. Range parts.

Q. Only ranges? [1261]

A. Yes, to the best of my knowledge.

Q. To the best of your knowledge, it was only ranges? A. Yes.

Q. That is the work, then, that you have testified, when Pioneer took over, after February 4th, they continued on to complete; is that right?

A. There was no evidence shortly after V-J Day that type of production was going on.

Mr. Nicoson: No. Will you read the question back to the witness?

(The question was read.)

The Witness: Yes.

(Testimony of Fred Rotter.)

Q. (By Mr. Nicoson): That is the sort of work that they are engaged in at the present time?

A. Yes.

Q. Now, you have also testified that the work of Pioneer appreciably was reduced after V-J Day by the termination of the contracts and so forth. What did Pioneer do between the time those contracts were cancelled and the time they took over at February 4th?

A. I wouldn't know definitely because I never interested myself in determining what was going on over there.

Q. Do you know, Mr. Rotter, whether or not the Pioneer Electric Company had any more than, I believe you put it, eight or a dozen employees on February 4th? [1262]

Mr. Collins: Objected to as not the best evidence. This witness was not an employee of the Pioneer Electric—on what date?

Mr. Nicoson: February 4th.

Mr. Collins: I will offer to stipulate that on February 4th the Pioneer Electric Company had about 350 employees.

Mr. Nicoson: That wasn't what I was shooting at.

Q. (By Mr. Nicoson): Immediately prior to February 4th, do you know how many employees Pioneer Electric Company had?

Mr. Collins: Just a moment. That is objected to on the ground it calls for a conclusion of the witness. There is no foundation laid. It is not the

(Testimony of Fred Rotter.)

best evidence. This man was not an employee of Pioneer prior to February 4th.

Trial Examiner Kent: I think there is merit in the objection.

Mr. Nicoson: I merely asked him if he knew.

Trial Examiner Kent: If he knows, he may answer.

The Witness: I do not know.

Mr. Nicoson: We get the other points, see.

Q. (By Mr. Nicoson): Now, let's go back to the meeting, one of the meetings, which you testified to in response to Mr. Garrett's question, and where Despol, as you testified, said that he realized he was in a fix—he had forgotten to bring the Pioneer into it—and that the National Labor Relations Board would have to help him out of that fix. [1263] Do you remember that?

Mr. Collins: Mr. Nicoson, may I interrupt for a moment? I have a witness here who is the plant superintendent and who has an appointment with the doctor, as I understand, between 3:00 and 4:00 this afternoon. I wanted to ask him one question. I wonder if we might take him out of turn?

Mr. Nicoson: I am about through with this witness. I would like to have him answer this, and I think I am through with him.

Mr. Collins: Very well.

Q. (By Mr. Nicoson): You remember that portion of your testimony? A. Yes.

Q. How did Mr. Despol come to say that? Give us all the conversation that led up to it.

(Testimony of Fred Rotter.)

A. Mr. Collins had mentioned the fact that,—asked Mr. Despol whether or not he knew that this contract did not affect, was not going to affect all of the employees that he had figured or contemplated would be affected by it, due to the fact that the majority of the employees would be absorbed by the Pioneer Electric Company.

And Mr. Despol answered that he did overlook that situation there and if a thing like that is contemplated he would have to refer to the N.L.R.B. for further assistance.

Mr. Nicoson: No further questions. [1264]

Mr. Collins: As a matter of fact, Mr. Rotter, didn't I suggest he take it up with the N.L.R.B.?

The Witness: You did.

Mr. Collins: That is all.

Mr. Garrett: No questions.

Mr. Collins: That is all.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: I will call Mr. Joe Spallino.

JOE SPALLINO

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Mr. Garrett: If he has to get to the doctor, I am going to have some questions to ask this man.

Mr. Collins: You can recall him again. I want to get him out of here.

(Testimony of Joe Spallino.)

Direct Examination

By Mr. Collins:

Q. Will you state your name, please?

A. Joe Spallino.

Mr. Garrett: May it be understood my cross-examination of this witness may be reserved until such time as he can be recalled, if he is excused today?

Trial Examiner Kent: Yes.

Q. (By Mr. Collins): Mr. Spallino, calling your attention to some time in the spring of 1942 or of 1944, in the presence [1265] Mr. C. W. Collins, Mr. W. J. O'Keefe and Mr. Charles Spallino, do you recall having any conversation at all with Mr. Charles Spallino? A. I do.

Q. What was the conversation?

Mr. Nicoson: May I have the time? I am sorry. I didn't get it. [1266]

Mr. Collins: I am sorry, Mr. Nicoson, that is what I was trying to get. You recall Charles Spallino testified to a conversation he had with his brother Joe Spallino.

Mr. Nicoson: Was this prior to the time he came up to your office or at your office?

Mr. Collins: I will get to that too. I tried to get him down to whether it was 1942 or 1944.

Mr. Nicoson: Irrespective of that, does your question relate to before he was in your office or in your office?

Mr. Collins: In the office.

(Testimony of Joe Spallino.)

Mr. Nicoson: That is what I want to know.

Q. (By Mr. Collins): What was the conversation in my office?

A. As I recollect it is that well we had a little discussion about money, he was not making enough money, and he used to come over and cry on my shoulder.

Q. Excuse me. What was your capacity at that time?

A. I was working for the Pioneer Electric, plant superintendent of the Pioneer Electric at the time.

Q. I see.

A. And I told him, I says, he complained about making more money——

Mr. Nicoson: This all took place in Collins' office, that you are telling about now? A. No.

Mr. Nicoson: I move to strike it.

Q. (By Mr. Collins): I ask you, did you have a conversation with him before you came into my office? A. That is right.

Q. Relate that conversation.

A. He used to come over every now and then and complain about not making enough money, so I told him "Why don't you talk to Collins and see what you can do?" So he said he would, but I don't imagine he ever did. So another day he came around and complained about his compensation for his accident that he had—oh, I don't recall that I think that was in 1941, so I says, "All right," I says, "come on, I will take you to Collins and we will talk about it." So it happened to be there was

(Testimony of Joe Spallino.)

Collins, Bill O'Keefe, Charlie Spallino and myself, and that is the only conversation I ever had with him that I did talk to you, Mr. Collins, if you could help him out, to get him his compensation for his accident and seeing if you could get him a little raise.

Q. Was anything said in my office about the fact that he did or did not attend any union meetings on a Sunday preceding this conversation?

A. Not to my knowledge, no.

Q. Did he say anything to you in the factory about attending any union meeting?

A. Not in the factory. [1268]

Q. Did you ever talk to him at all about union meetings?

A. That is either at his own house or over at my mother's.

Q. Are you related to him?

A. He is my brother. I told him that I would not belong to—well, in my position I can't belong to any union, but I said the C.I.O. has been a radical outfit. His wife had to belong to it, she worked for a bakery, and by gosh if she missed a week, even if her kids were sick, she had to pay her dues, she was assessed \$2.00 or whatever it was because she did not attend the meeting, and that is the only time I ever did talk union to my brother, to any of my brothers, because I have never been for it.

Q. Now, Mr. Spallino, has the company ever given you any instructions to be pro or anti union in the common meaning of that word?

A. No.

(Testimony of Joe Spallino.)

Q. Have you ever punished anybody for being a member of either union? A. I have not.

Q. Have you ever attempted to persuade anybody to join or not join either union?

A. I have not.

Q. This conversation you testified to having taken place with Charlie Spallino, was that after working hours, the one about the union activity?

A. After working hours in his own home or my mother's home.

Q. So those matters came up just between you as brothers? A. That is just all family affairs.

Q. Did you tell him if he joined up with either union that you would see that he would get in any kind of trouble or be out of a job?

A. No, not once.

Q. As a matter of fact, have you taken any action against him? A. I have not.

Mr. Collins: You may cross-examine.

Cross-Examination

By Mr. Nicoson:

Q. At this meeting at your mother's or his home where you said something about the C.I.O. being a radical organization, what else did you say about the C.I.O. to Charles at that time?

A. Oh, the only thing I ever did talk to him about was that I didn't care—I didn't believe in any union that would assess a woman or a man when they had a sick child at home they would have to leave their child on a Saturday at that time, I imagine that was about five or six years ago, that

(Testimony of Joe Spallino.)

she was working in the bakery, that she had to leave her home, instead of taking care of her kid, to go to meeting. She used to bring that up to us all the time herself. [1270]

Q. Did you mention that to Charles at that time? A. Yes, sir.

Q. What else did you say to him?

A. That is about all. I just told him I didn't believe in anybody jeopardizing their own jobs and everybody else's jobs just to cause—just for any union at all.

Q. How did you happen to say that?

A. Oh, I don't know. The conversation just came up about talking about—you know, I have three brothers altogether, and one of them happened to bring up the question how is the C.I.O. coming along, one of my brothers doesn't work for O'Keefe and Merritt.

Q. Which one was that?

A. That is my smallest brother. He doesn't work at the plant at all.

Q. Was your other brother, was the one who is the foreman, there at the time? A. Yes, sir.

Q. The younger brother asked how the C.I.O. was getting along? A. Yes.

Q. And that is how this conversation got started. Didn't you at that time tell Charles that he put you on the spot because you were superintendent there of the Pioneer Electric Company? [1271]

A. Oh, I might have said that. I might have said that, yes.

(Testimony of Joe Spallino.)

Q. And you also told him that it would be a brotherly favor to you and it would be a good thing for him to lay off the C.I.O. because he would be on the spot?

A. I don't recall the exact words that I told him, but I didn't like any of them, didn't want any unions.

Q. Your present position at O'Keefe and Merritt, you are plant superintendent?

Mr. Collins: Just a moment. Objected to as not proper cross-examination.

Mr. Nicoson: Since when have we been following that rule?

Mr. Collins: I didn't ask him anything about what his present job was.

Mr. Nicoson: That is all I want to find out, I think that may be true.

Trial Examiner Kent: The answer may be taken. It may not be strictly cross-examination, but as long as it clears up the record I think you may inquire.

Q. (By Mr. Nicoson): Would you answer that question? Are you plant superintendent? [1272]

A. Yes.

Q. Shortly after V-J Day you left Pioneer and became plant superintendent of O'Keefe and Merritt Company, isn't that correct, A. Yes.

Q. Then after February 4th, when Pioneer took over, you went back with Pioneer as plant superintendent? A. Yes.

(Testimony of Joe Spallino.)

Q. Then after February 4th, when Pioneer took over, you went back as plant superintendent?

A. Yes.

Q. And prior to the Pioneer Company coming in the plant, before coming into existence, what was your job? Did you get the time clear, now?

A. Between the old Pioneer and the new Pioneer?

Q. No, before Pioneer ever came into existence, at the time right just before that, the testimony here is that Pioneer was organized sometime in August, 1942.

A. That is right.

Q. Just immediately prior to that time you were employed by O'Keefe and Merritt, were you not?

A. Yes, sir.

Q. What was your job?

A. I was plant assistant superintendent.

Q. You were assistant to Bill O'Keefe, is that correct?

A. Yes.

Mr. Nicoson: That is all. [1273]

Redirect Examination

By Mr. Collins:

Q. This conversation you had with your brother, Mr. Spallino, either in your home or in your mother's home, wherever it might have been, that was several years ago?

A. That is quite a while ago. I imagine it is the latest part of 1942 or into '43, somewhere around there.

Mr. Collins: That is all.

(Testimony of Joe Spallino.)

Recross-Examination

By Mr. Nicoson:

Q. You were in Pioneer at the time?

A. I was with Pioneer then.

Mr. Nicoson: That is all.

Mr. Collins: You may be excused.

Trial Examiner Kent: You are excused.

(Witness excused.)

Mr. Collins: Mr. Matrenga, please.

LAWRENCE MATRENGA,

a witness called by and on behalf of the respondent,
having been *previous* duly sworn, was examined and
testified as follows:

Direct Examination

By Mr. Collins:

Q. Mr. Matrenga, are you employed——

Mr. Tyre: Pardon me. May we have the witness' full name?

Mr. Collins: Yes. What is your name?

The Witness: Lawrence Matrenga. [1274]

Q. (By Mr. Collins) Mr. Matrenga, shortly before the election conducted in the plant of O'Keefe and Merritt Company, on the 20th of November, 1945, what was your job for the O'Keefe and Merritt Company? A. Foundry foreman.

Q. Foundry foreman. Do you recall seeing Mr. Charles Spallino in the foundry passing out some kind of cards or going around talking to various employees? A. I did.

(Testimony of Lawrence Matrenga.)

Q. Did you approach Mr. Spallino and ask him what he was doing in your department?

A. I never.

Q. Did he tell you what he was doing in there?

A. Told me he was passing these turkey tickets out.

Q. Did he tell you he was organizing for the A. F. of L. in your department? A. He never.

Mr. Collins: You may cross-examine.

One more question.

Q. (By Mr. Collins): Do you know what Mr. Spallinos' job in the Five and Over Club was at that time?

A. He was the president of the Five and Over Club.

Q. Was it part of his job to come in and around that department in connection with various club activities?

A. He was there a lot of times, all over the shop, in fact. [1275]

Q. You have seen him in your department before wandering around doing miscellaneous things?

A. I have.

Q. Did you ask any of the men what he was doing in there? A. No, I didn't.

Q. But he did tell you that he was attempting to pass out the cards for the turkeys for November, Thanksgiving Day?

A. That is right, he was giving turkey tickets out.

Mr. Collins: You may cross-examine.

(Testimony of Lawrence Matrenga.)

Cross-Examination

By Mr. Nicoson:

Q. Isn't it a fact, Mr. Matrenga, that while Charles Spallino was president of the Five and Over Club he went through and in and out of your department quite a bit of the time?

A. When he was president, yes, sir.

Q. And you didn't inquire every time he came in there what he was doing? A. No, sir.

Q. Or did you interfere in any way with what he was doing? A. Never.

Q. And you are not sure now that you always knew what he was doing while he was in there, are you?

A. At the time he came out there he was giving the turkey tickets out. The only reason I found out, I went after my own, and he said he didn't have it.

Q. Did you know whether that was all that he was passing out at that time?

A. That is all I knew.

Mr. Nicoson: No further questions.

Q. (By Mr. Garrett): How many men did you have working in the foundry at that time, Mr. Matrenga? A. Oh, let's see, between 75 or 85.

Q. What were you making?

A. At that time?

Q. Yes.

A. Well, we was making outside work and a few stove parts.

Q. What was this outside work?

A. Plumbing ware.

